

COPYRIGHT CONSCIOUSNESS AND INTELLECTUAL PROPERTY  
DISCOURSE: THE POLITICS OF CREATIVE COMMONS

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## **ABSTRACT**

As a private ordering strategy, Creative Commons licenses (CC licenses) are crafted in a way to cultivate a “free culture.” According to Lawrence Lessig, the founder of Creative Commons, a free culture refers to a culture granting intellectual property rights to an author, but also guarantees that follow-on creators remain as free as possible. The opposite of a free culture is a “permission culture,” one in which creation is not possible without permission from copyright holders. However, whether CC licenses are helpful in building a free culture is disputable. Some scholars contend that the only coherent ideology behind CC license is the freedom of copyright owners to govern their works. Indeed, these same scholars argue that CC licenses may actually strengthen the norms of a permission culture – without licenses from copyright owners, sharing and re-using is always prohibited. On the other hand, advocates of Creative Commons are not convinced of the critique. They believe that the “some rights reserved” Creative Commons provides at least some progress against the “all rights reserved” copyright culture.

The above dispute is due to different views of how CC licenses affect the copyright consciousness. It also results from the ambivalent relationship between Creative Commons and the discourse practices of intellectual property. Against this backdrop, I conducted an online survey experiment to investigate how CC licenses impact the copyright consciousness of American Internet users. In addition, I used the promotion of CC licenses in Taiwan as a case study to illustrate the relationship between Creative Commons and intellectual property discourse. The findings of this study suggest the above concern that CC licenses may foster a permission culture is not without basis. The results of the experiment show that participants who had the knowledge of CC licensing practice were less likely to use unlicensed content than other participants. They also tended to think it is important to obtain permission to use a copyrighted work. Moreover, the case study of Taiwan indicates that the promotion of CC licenses can actually be used in the public education campaigns to enhance copyright consciousness. Based on the findings of this study, I suggest that the conceptual framework of fair culture may help us better understand the aspect of control in CC licenses and its impact on copyright consciousness, an aspect often overlooked from the viewpoint of free culture.

**Key Words:** Creative Commons, Copyright Consciousness, Free Culture, Intellectual Property, Permission Culture, Public Domain, Copyright.

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## I. Introduction

In the Internet age, copyright law emerges as a cornerstone profoundly influencing the production and distribution of information. Today, a rich and diversified culture increasingly depends on the balance between copyright exclusivity and the public domain. On the one hand, advocates of the content industry fear that the practices of free access to information on the Internet are going to destroy culture business and professional authors. They deride the free ride of “digital parasites” and push for stronger copyright protection and enforcement.<sup>1</sup> On the other hand, some activists and scholars believe that the recent expansion of copyright is restrictive and overreaching.<sup>2</sup> They worry that the enclosure of the public domain is detrimental to culture and creativity and call for a cultural environmental movement to preserve the public domain.<sup>3</sup>

Creative Commons, an NGO in the United States with affiliates worldwide, is a high profile organization in this cultural environmental movement. It is a private ordering initiative in response to the enclosure of the public domain by the 1998 Copyright Term Extension Act (CTEA), which extended the term of copyrighted works retroactively in the United States by 20 years. Creative Commons aims to re-craft a public domain through a voluntary licensing tool called Creative Commons licenses (CC licenses).<sup>4</sup> As standardized public copyright licenses, CC licenses allow

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1 ROBERT LEVINE, *FREE RIDE : HOW DIGITAL PARASITES ARE DESTROYING THE CULTURE BUSINESS, AND HOW THE CULTURE BUSINESS CAN FIGHT BACK* (Doubleday, 1st ed.) (2011).

2 See generally JAMES BOYLE, *THE PUBLIC DOMAIN : ENCLOSING THE COMMONS OF THE MIND* (Yale University Press) (2008).

3 See James Boyle, *A Politics of Intellectual Property: Environmentalism for the Net?*, 47 DUKE L. J. 87 (1997).

4 Lawrence Lessig, *Re-crafting a Public Domain*, 18 YALE J.L. & HUMAN. 56 (2006).

authors to delimit the freedoms that they want their work to carry. In this way, CC licenses enable creators to cultivate the public domain by their own hand. In addition to cultivating the public domain, Creative Commons also endeavors to foster a “free culture,” a term which Lawrence Lessig uses to refer to a culture that grants intellectual property rights to authors, but also guarantees that follow-on creators remain as free as possible from the control of the past. The opposite of a free culture is a “permission culture,” in which creations and innovations are not possible without the permission of creators from the past.<sup>5</sup> In this vein, Lessig regards CC licenses as a tool that enables free culture and raises the awareness that not “everything is property and has to be owned.”<sup>6</sup>

However, whether CC licenses are helpful to build a free culture is disputable. Creative Commons material by definition must be copyrighted content, which is private property owned by a copyright holder. In this regard, some scholars criticize that CC licenses may strengthen the underlying discourses of intellectual property. They argue that the only coherent ideology behind CC licenses is “the freedom of owners to govern their own works.”<sup>7</sup> They worry that CC licenses, aiming to enhance open access to intellectual commons, may paradoxically strengthen the norm of permission culture, in which sharing and re-using are always prohibited unless they are licensed by copyright holders.<sup>8</sup> On the other hand, the advocates of Creative Commons are less pessimistic about the private ordering strategy of Creative

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5 LAWRENCE LESSIG, *FREE CULTURE: THE NATURE AND FUTURE OF CREATIVITY* (The Penguin Press) (2004).

6 See DAVID BOLLIER, *VIRAL SPIRAL : HOW THE COMMONERS BUILT A DIGITAL REPUBLIC OF THEIR OWN* 93 (The New Press) (2008).

7 Niva Elkin-Koren, *What Contracts Cannot Do: The Limits of Private Ordering In Facilitating a Creative Commons*, 74 *FORDHAM L. REV.* 375 (2005).

8 *Id.*

Commons. Lessig believes that the vision of “Some Rights Reserved” embodied in CC licenses represents progress against the background of the copyright wars, where the total control over the uses of copyrighted work – “All Rights Reserved” – is a dominant message.<sup>9</sup>

The aforementioned debate on whether CC licenses cultivate a free culture or foster a permission culture arose shortly after the first release of CC licenses. However, there is little empirical research on the above dispute. Neither advocates nor critics of the private ordering strategy of Creative Commons provide much empirical data for their claims. Against this backdrop, an online survey experiment was conducted by the author to understand how CC licenses may affect the Internet users' copyright consciousness, which is the central dispute in the above debate. In addition, this study uses the promotion of CC licenses in Taiwan as a case study to analyze the ambivalent relationship between Creative Commons and the discourse practices of intellectual property. The result of the experiment shows that participants who are acquainted with CC licensing practices are less likely to use copyrighted materials without obtaining permission from copyright holders, as compared to other participants. They also tended to think it is important to obtain permission for using a copyrighted works. The finding implies that while aiming to cultivating a free culture, CC licenses may, to some extent, foster the norms of a permission culture. Finally this study suggests that the conceptual framework of *fair culture* may help us understand better the aspect of control in CC licenses and its impact on copyright consciousness, which is often overlooked from the perspective of free culture.

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<sup>9</sup> Lessig, *supra* note 4 at 80–81.

## **II. Literature Review and Research Questions**

### **A. The Origin, Vision and Growth of Creative Commons**

In many aspects, Creative Commons is a private initiative that came about in response to the 1998 Copyright Term Extension Act (CTEA), which retroactively extended copyright terms and forestalled would-be-expired copyrighted works from entering the public domain. Among copyright acts passed in the second half of the nineties by the U.S. Congress, the CTEA in particular had drew a considerable amount of controversy. The opponents of CTEA filed a lawsuit against its constitutionality. During the litigation, the named plaintiff Eric Eldred told his legal counsel Lawrence Lessig that, in addition to striking down CTEA, he wanted to initiate an “affirmative and sustainable alternative” to cultivate the public domain.<sup>10</sup> In the end, Eldred and Lessig did not win the case in the Supreme Court.<sup>11</sup> However, the idea of an affirmative alternative to conserve the public domain led to the founding of Creative Commons in 2001, which has turned out to be a highly successful project.

Inspired by the success of the GNU General Public License in the Free and Open Source Software (FOSS) community, Creative Commons designed a set of standardized public copyright licenses – CC licenses. CC licenses allow unspecified people worldwide to copy and distribute works in perpetuity without paying royalties. The licensees only need to abide by certain of the following provisions stipulated by

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<sup>10</sup> BOLLIER *supra* note 6 at 93.

<sup>11</sup> The Supreme Court rules that the CTEA's extension of copyright term is pursuant to the “limited time” provision in the Constitution. It also rules that the CTEA does not violate the freedom of expression protected by First Amendment because the fair use and idea/expression dichotomy, which serve as built-in First Amendment valves in Copyright Act, remain intact and unchanged. See *Eldred v. Ashcroft*, 123 S.Ct. 769 (2003).

authors: attribution, non-commercial, no derivative works, and share-alike.

“Attribution” refers to the requirement of giving credit to the original authors when using their works. “Non-commercial” forbids users to profit by copying or distributing copyrighted works. “No derivative works” refers to the condition that users may not alter, transform or build upon an author's work without further permission. “Share-alike” requires that the adaptations must be released with the same or interpolate licenses of the original work. These four provisions are combined into different types of licenses, which include (1) Attribution (CC-BY), (2) Attribution, Share-alike (CC-BY-SA), (3) Attribution, Non-commercial (CC-BY-NC), (4) Attribution, Non-commercial, Share-alike (CC-BY-NC-SA) (5) Attribution, No Derivatives (CC-BY-ND), (6) Attribution, Non-commercial, No Derivatives (CC-BY-NC-ND).

By offering the public a set of CC licenses, Creative Commons aims to enable the public to cultivate the public domain by their own hand. However, technically speaking, Creative Commons resources, which by definition are copyrighted materials, are not in the public domain.<sup>12</sup> Nevertheless, many public domain advocates treat Creative Commons as an affirmative initiative to expand the public domain. This is probably because they define the concept of public domain more broadly than the formal copyright law definition.<sup>13</sup> According to their view, the public domain not only

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12 In copyright law, the public domain traditionally refers to (1) works that fail to meet the standard of originality and a minimum requirement for creativity, (2) expired copyrighted works, (3) and elements outside the subject matter of copyright, such as ideas and facts underlying the copyrighted works.

13 See Jessica Litman, *The Public Domain*, 39 EMORY L. J. 965 (1990); Yochai Benkler, *Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain*, 74 N.Y.U. L. REV. 354 (1999); David Lange, *Reimagining the Public Domain*, 66 LAW & CONTEMP. PROB. (2003).



includes uncopyrighted works but also covers the express limits on the scope of copyright, such as fair use, an affirmative defense against the allegation of copyright infringement. Similarly, in Lessig's view, the distinctive characteristic of the public domain is that it is a "permission free" zone in which the freedom to use resources is assumed and not asked-for.<sup>14</sup> In this regard, Lessig argues that although Creative Commons does not technically expand the "the public domain," it is experienced as a permission-free zone by users because the permissions are granted up front.<sup>15</sup> Moreover, because CC licenses express the terms of use in advance in a "human-readable" way, they also create an "effective public domain" – a lawyer-free zone where subsequent users can use materials without legal hassle and uncertainty.<sup>16</sup>

In addition to expanding the effective public domain, Creative Commons also aims to build a free culture. Lessig defines a free culture as a culture which "guarantees that follow-on creators and innovators remain *as free as possible* from the control of the past." However, he also emphatically states that free culture is not a culture without property, just as a free market is not a market in which everything is free. Indeed, it protects creators and innovators by granting them intellectual property rights.<sup>17</sup> A free culture thus is a balance between the two extremes: the total control of "all rights reserved" and the anarchy of "no rights respected." In this regard, CC licenses not only enable the sharing and remixing practices in a free culture, but also send a message to the public of an alternative to the above two extremes – *some rights reserved*.<sup>18</sup> Moreover, according to Lessig, one of the core visions of free culture

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14 Lessig *supra* note 4 at 57.

15 *Id.* at 74–75.

16 *Id.* at 58–59.

17 LESSIG *supra* note 5 at xiv.

18 *Id.* at 283–286.

is that “remix” is free.<sup>19</sup> In other words, we should be able to re-express and recreate the culture we experience by commenting, transforming, criticizing or praising without obtaining permission. In his opinion, remix by amateurs should be deregulated and made free from the control of copyright holders.<sup>20</sup> While CC licenses do not change copyright law, he believes that CC licenses offer a step toward deregulating amateur creativity because every CC licenses authorize non-commercial distribution.<sup>21</sup>

Since the first version of CC licenses was released in December 2002, the licenses have been widely adopted on the Internet by individuals as well as organizations. It is estimated that more than four hundred million works were licensed under Creative Commons as of December 2010.<sup>22</sup> Moreover, the adoption of CC licenses is not limited to U.S. jurisdiction. The first ported – that is, linguistically translated and legally adapted – CC licenses in other jurisdictions were released in Japan in 2004, following by Finland and Germany. As of 2013, 71 jurisdictions have ported Creative Common licenses under their own copyright and contract laws. In short, CC licenses have become a global standard of public copyright license.

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19 Lawrence Lessig, *The Vision for the Creative Commons : What are We and Where are We headed ?*, in OPEN CONTENT LICNESING : CULTIVATING THE CREATVIE COMMONS 37, 36-50 (Brian Fitzgerald eds., 2007).

20 LAWRENCE LESSIG, REMIX: MAKING ART AND COMMERCE THRIVE IN THE HYBRID ECONOMY (The Penguin Press) (2008).

21 *Id.* at 266.

22 Creative Commons, Metrics/License statistics - CC Wiki, [http://wiki.creativecommons.org/Metrics/License\\_statistics](http://wiki.creativecommons.org/Metrics/License_statistics) (last visited 6/15/2013).

## **B. Creative Commons and the Gravitational Pull of Intellectual Property Law**

Broadly speaking, Creative Commons is part of the Access to Knowledge(A2K) movement, a loose collection of NGOs and individuals who share the idea that access to knowledge is essential for people to achieve justice, freedom, and economic development. Drawing upon her analysis of the A2K movement, Kapczynski argues that law plays a central role in the framing processes of legal mobilization. She contends that there are three effects of law on the framing process of legal mobilization: architectural, discursive and strategic.<sup>23</sup> The term architectural effects refers to the role of law in influencing a group's perception of who its allies and opponents are. Discursive effects concern the phenomenon of how individuals or groups make use of ready legal discourses and remake them to legitimate their agendas. Strategic effects are defined as circumstances in which an individual or a group strategically makes narrow interpretive choices of legal discourses to capture law's instrumental benefits. Kapczynski labels these effects on framing processes as “law's gravitation pull,” which refers to the phenomenon that engaging in law generates feedback effects that in turn shape a social movement's narratives and self-construction. In other words, a social movement is not only mobilized but also constituted through law.

One of the implications of law's gravitation pull in the politics of intellectual property is that groups of the A2K movement and their opponents alike may find themselves both speaking in the same language of law, as both of them try to

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<sup>23</sup> Amy Kapczynski, *Access to Knowledge Mobilization and the New Politics of Intellectual Property*, *The*, 117 YALE LAW JOURNAL 804, 859–876 (2007).

legitimate their claims and capture the instrumental benefits of law.<sup>24</sup> Indeed, the A2K movement shares certain core elements of the intellectual property regime which it opposes.<sup>25</sup> In this vein, law creates a zone of overlapping consensus and has the effect of integrating disagreeing communities. Moreover, because law is a web of diverse, indeterminate and often contradictory legal traditions and discourses, it can be used strategically to create spaces for resistance and disruptive change.<sup>26</sup> On the other hand, the limitation of law in bringing social change has long been recognized in legal mobilization scholarship.<sup>27</sup> Indeed, a social movement that actively engages in law might suffer a “legitimizing cost.” The idea is that legal mobilization will sometimes legitimate deeper or broader problems in a legal institution. This is because in order to take advantage of the instrumental and legitimizing power of law, activists and groups often need to make claims based on existing legal institutions and discourses, thus implicitly deferring to them.<sup>28</sup> In other words, a social movement struggling with law can strengthen law precisely as it unsettles it.<sup>29</sup>

In many aspects, as Creative Commons deeply engages and struggles with copyright law, it shares characteristics that are common in legal mobilization. In one way, because Creative Commons licenses are essentially copyright licenses under which individual authors can release their works, it builds an unlikely consensus from

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24 *Id.* at 879.

25 Jessica Silbey, *Comparative Tales of Origins and Access: Intellectual Property and Rhetoric of Social Change*, 61 CASE WESTERN RESERVE LAW REVIEW 195 (2010).

26 MICHAEL W. MCCANN, *RIGHTS AT WORK : PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* / 8–9 (University of Chicago Press,) (1994).

27 See STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974).

28 Kapczynski *supra* note 23 at 877–878.

29 SIEGEL, *CONSTITUTIONAL CULTURE, SOCIAL MOVEMENT CONFLICT AND THE CONSTITUTIONAL CHANGE: THE CASE OF THE DE FACTO ERA* - 2005-06 BRENNAN CENTER SYMPOSIUM LECTURE, 94 CAL.

both copyright pessimists and optimists, who rarely share agreements in today's copyright politics. Moreover, by strategically using copyright contracts, Creative Commons builds a rich and expansive global intellectual commons in a decade that would otherwise be unlikely to develop through litigation and legislation in individual jurisdictions. On the other hand, some scholars believe that a reliance on licenses may reinforce norms of permission culture as it tries to unsettle it. This is the reason why Dussolier is worried that Creative Commons as a copyright license may fail to bring the real change to the regime of intellectual property.<sup>30</sup> In the following section, I will explain the debate on the ideology and private ordering strategy of Creative Commons.

### **C. The Politics of Creative Commons: Freedom for Whom?**

CC licenses have become popular among individuals as well as organizations. However, some scholars are concerned that the ideological fuzziness underlying its private ordering strategy may paradoxically legitimize the proprietary control of copyright owners and ultimately fail to bring the genuine change to the politics of intellectual property. Elkin-Koren contends that while Creative Commons recognizes cultural commons as a key to enhance creativity, it never quite clarifies what kind of freedom is essential to a free culture.<sup>31</sup> Amateur remix might be the candidate as a core freedom in this free culture. However, as Chen points out, CC

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30 Severine Dusollier, *The Master's Tools v. The Master's House: Creative Commons v. Copyright*, 29 COLUM. J.L. & ARTS 271 (2005)

31 Elkin-Koren *supra* note 7 at 389–390.

licenses do not necessarily facilitate the “remix” practice in a free culture.<sup>32</sup> Both CC-BY-ND and CC-BY-NC-ND forbid derivative works, the latter of which even forbids the amateur remix that Lessig thinks should be deregulated.

On the other hand, Anna Nimus suggests that Creative Commons is “a movement of customizing the owner's license.”<sup>33</sup> What Creative Commons has done is to facilitate copyright holders' freedom to dispose of their property in a wide spectrum of customized licenses tailored to their needs. Indeed, Berry and Moss even argue that Creative Commons is “a common without commonality.” According to them, the CC-licensed content is neither shared in common nor owned in common. Instead, it is left to the whims of copyright holders to permit or disallow the reuse of works.<sup>34</sup> In short, the critics of Creative Commons argue that the ideology underlying the wide spectrum of CC licenses communicates a strong proprietary message: authors should be free to govern their own works.<sup>35</sup>

Because of the proprietary message underlying CC licenses, some scholars worry that the private ordering strategy of Creative Commons may be self-defeating in realizing the vision of free culture. Elkin-Koren suggests that CC licenses, aiming to enhance open access to intellectual commons, may strengthen the idea that information is proprietary – sharing and re-using are always prohibited without the

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32 Shun-ling Chen, *To Surpass or to Conform - What are Public Licenses For*, 2009 JOURNAL OF LAW, TECHNOLOGY & POLICY 107, 119 (2009).

33 Anna Nimus, *Copyright, Copyleft and the Creative Anti-Commons*, SUBSOL (2006), available at [http://subsol.c3.hu/subsol\\_2/contributors0/nimustext.html](http://subsol.c3.hu/subsol_2/contributors0/nimustext.html).

34 David M. Berry & Giles Moss, *The Politics of Libre Commons*, First Monday Vol. 11, No. 9-4 (Sep. 2006), available at <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1403/1321>.

35 Elkin-Koren *supra* note 7 at 390.

permission from copyright owners.<sup>36</sup> In particular, she points out that because there is no fence against “trespassers” in intangible information works, the abstract “fence” imposed by social norms play a more prominent role than their counterpart in tangible property. In other words, achieving compliance with copyright laws by the general public largely depends on internalizing the norms of proprietary practices.<sup>37</sup> Accordingly, as CC licenses make copyrighted content more user-friendly, users might become accustomed to the licensing practice. Over time, they may be less unlikely to use copyrighted content without an explicit license. In addition, the more people engage in securing a license to use others' works, the stronger they may feel about licensing their own works. In this regard, she suggests that the popularity of CC licenses may reinforce the norms of a permission culture. To put it differently, CC licenses may be a self-defeating tactic in the effort to nurture a free culture.<sup>38</sup>

On the other hand, advocates of Creative Commons are less pessimistic about the private ordering strategy of Creative Commons. In his response to Elkin-Koren, Lessig points out that their disagreement is about the best strategy of resisting the emergent norms of permission culture on the Internet. And since “there are no clear analytical tools for selecting among the strategies,” he thinks that the idea of “some rights reserved” perhaps represents a progress against the background of the copyright wars, where he believes that “all rights reserved” is the dominant message.<sup>39</sup> As a former board member of Creative Commons, Boyle is also unconvinced by Elkin-Koren's argument. He acknowledges that, in many ways, Creative Commons is an

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<sup>36</sup> *Id.*

<sup>37</sup> Elkin-Koren *supra* note 7 at 398.

<sup>38</sup> *Id.* at 400–402.

<sup>39</sup> Lessig, *supra* note 4 at 80–81.

imperfect solution. However, he personally prefers “lighting candles rather than lamenting darkness.” Moreover, he contends that Elkin-Koren's account is not sufficiently grounded in empirical evidence of the actual perceptions of license users.<sup>40</sup>

## D. Current Research on Creative Commons

The aforementioned debate on the strategy and impact of Creative Commons started shortly after the release of its first version licenses. However, most studies involved in this debate only discuss the theoretical implication of CC licenses in terms of propriety discourse or copyright consciousness. There are relative few empirical studies that examine the discourse practices of Creative Commons, or investigate the impact of CC licenses on users' copyright consciousness. To be sure, there is a fair amount of research on CC licenses; however, most of these research either concerns about the issues of information cost, incompatibility and enforceability of CC licenses,<sup>41</sup> or the role of CC licenses in the emergent online business model.<sup>42</sup>

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40 BOYLE *supra* note 2 at 288.

41 Zachary Katz, *Pitfalls of Open Licensing: An Analysis of Creative Commons Licensing*, 46 IDEA: THE INTELLECTUAL PROPERTY LAW REVIEW 391 (2005); Molly Shaffer Van Houweling, *Cultural Environmentalism and the Constructed Commons*, 70 LAW & CONTEMP. PROB. 23 (2007); Ashley West, *Little Victories: Promoting Artistic Progress through the Enforcement of Creative Commons Attribution and Share-Alike Licenses*, 36 FLORIDA STATE UNIVERSITY LAW REVIEW 903 (2008); Bas Bloemsaat & Pieter Kleve, *Creative Commons: A business model for products nobody wants to buy*, 23 INTERNATIONAL REVIEW OF LAW, COMPUTERS & TECHNOLOGY 237–249 (2009); Melaine Dulong de Rosnay, *Creative Commons Legal Pitfalls: Incompatibilities and Solutions*: Institute for Information Law, University of Amsterdam (Sep. 2010).

42 Michael W. Carroll, *Creative Commons and the New Intermediaries*, 2006 MICH. ST. L. REV. 45 (2006); Guido Russi, *Creative Commons, CC-Plus, and Hybrid Intermediaries: A Stakeholder's Perspective*, 7 INTERNATIONAL LAW & MANAGEMENT REVIEW 103 (2010); Patryk Galuszka, *Netlabels and democratization of the recording industry*, 17 FIRST MONDAY (2012), <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/viewArticle/3770/3278> (last visited Jan 22, 2013).



One of the exceptions to the relatively scant empirical studies on the above debate is Boiler's account of the controversy on the private ordering strategy of Creative Commons. It accounts a succinct and helpful overview of the controversy; however, he does not investigate the discursive practices of Creative Commons in its brochures, clips, and other promotional materials, which are vital to analyze the ambivalent relationship between CC licenses and the discourse practices of intellectual property. Another exception is the report published by Creative Commons in 2009 of how people understand the "noncommercial use" element in CC licenses.<sup>43</sup> The report provides useful data about community understanding of the non-commercial condition. Nevertheless, it does not deal with the impact of CC licenses on copyright consciousness.

A notable exception is Kim's study on licensors' uses of CC licenses.<sup>44</sup> His study shows that CC licensors tended to recognize their intellectual debts from other authors.<sup>45</sup> More than half of the CC licensors in his survey were also concerned about copyright infringement when creating works, and most of them had tried to obtain permission from copyright holder.<sup>46</sup> Kim's study is noteworthy with respect to the understanding of the demographics and culture of CC licensors. Nevertheless, his study does not deal with the issue of how the acquaintance with CC-licensing

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43 Creative Commons, "Defining Noncommercial: A Study of How Online Population Understands 'Noncommercial Use'" (Sept. 2009), available at [http://wiki.creativecommons.org/Defining\\_Noncommercial](http://wiki.creativecommons.org/Defining_Noncommercial).

44 Minjeong Kim, *The creative commons and copyright protection in the digital era: Uses of creative commons licenses*, 13 JOURNAL OF COMPUTER-MEDIATED COMMUNICATION (2007).

45 *Id* at 196.

46 Out of 280 CC licensors in his study, 67.9% were concerned that they might infringe others' copyright when they produce their own creative works. Among those who were concerned about infringement, 76% had tried to obtain permission from copyright holders. *Id* at 196.

practices may *affect* individuals' copyright consciousness.

## **E. Research Question and Research Strategy**

Against the above backdrop, this study aims to analyze Creative Commons in two respects. First, it aims to analyze the discourse practices of Creative Commons and its relation to intellectual property. Discourse practices are recurrent patterns about the representation of actions, acts and events, in which ideology is circulated and reproduced.<sup>47</sup> The empirical analysis of discourse practices of Creative Commons can help us understand the ambivalent ideological relationship between Creative Commons and intellectual property. In this regard, the analysis provides one step toward understanding the strengths and limitations of the private ordering strategy in the politics of intellectual property. This research uses the promotion of CC licenses in Taiwan as a case study to examine the discourse practices of Creative Commons. The selection of Taiwan as a case study was based on several criteria. First of all, as CC licenses are “ported” into different jurisdictions, the affiliates of Creative Commons around the world also play a prominent role in formulating the global movement of Creative Commons. The case study of Creative Commons in Taiwan is an example of how the discourse practices of Creative Commons are reproduced or transformed in these jurisdictions. Secondly, unlike the development in the United States, the Taiwanese government plays a significant role in promoting the adoption of CC licenses among educators, students, and Internet users. One of the reasons the

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<sup>47</sup> BARBARA JOHNSTONE, DISCOURSE ANALYSIS 43-44 (Blackwell) (2008).

Taiwanese government has dedicated itself to the promotion of CC licenses is to raise the public awareness of copyright compliance. In some cases, the promotion of CC licenses in Taiwan is more of an educational campaign about copyright compliance than a grassroots movement. Accordingly, by examining the promotion materials of CC licenses by the Taiwanese government, we can see how CC licenses are reframed under the discourse practices of intellectual property.

Secondly, this study analyzes the results of an online survey experiment conducted by the author to understand how CC licenses affect copyright consciousness of Internet users. The concept of legal consciousness refers to how law constructs understandings, affects actions, and shapes the attitudes of individuals.<sup>48</sup> In many aspects, the reasons why scholars debate whether Creative Commons movement fosters a free culture or breeds a permission culture is due to their different views of how CC licenses affect the copyright consciousness. However, as mentioned before, there are remarkably few empirical studies dealing with this issue. Indeed, this study presents perhaps one of the first empirical studies of CC licenses' impact on copyright consciousness. The experiment was designed to understand the following three questions:

1. How does the fact that a work is released under a CC license affect Internet users' behaviors in using that work?
2. How does the knowledge of CC licensing practices influence Internet users'

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<sup>48</sup> Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment*, 34 LAW & SOCIETY REVIEW 1055, 1058 (2000).

behaviors in using unauthorized content?

3. How does the knowledge of CC licensing practices affect Internet users' attitudes toward obtaining permission?

### **III. Methodology**

I have employed multiple methods to approach the research questions in this study. I used Taiwan's experience of promoting CC licenses as a case study to illustrate the ambivalent relationship between the discourse practice of Creative Commons and intellectual property. I also conducted an experiment to understand how CC licenses may affect copyright consciousness. The following sections explain the type of data collected for the case study of Taiwan, and describes the research population, procedures and materials of the online experiment.

#### **A. Case Study**

##### **1. Qualitative Discourse Analysis**

Qualitative discourse analysis focuses on texts to identify patterns, implicit relations and underlying structure of ideas. The data collected for the case study of Taiwan included brochures, documents, comics and other promotional materials of CC licenses published by the Taiwan Intellectual Property Office. In particular, I collected materials in the promotional campaign of CC licenses held by TIPO and Wretch, a leading service providers of blog and online albums in Taiwan.

##### **2. In-depth Interview**

In addition to the above data collection, I interviewed the director of Creative Commons Taiwan. The semi-structured interview aimed to gather information related

to the development of Creative Commons that are otherwise unavailable in publications. The interview questions included the origin, development, and the agenda of Creative Commons Taiwan. I also inquired about the relationship between the Creative Commons Taiwan and certain promotional campaigns of CC licenses by the Taiwanese Government.

## **B. Experiment**

### **1. Research Population and Subject Pool**

Most Creative Commons resources are distributed through the Internet in digital form. Indeed, CC licenses are designed to enable the distribution and remix of digital works on the Internet. In this vein, Internet users provide a suitable research population for understanding how CC licenses may affect the licensees' copyright consciousness. While Creative Commons resources are widely circulated in different jurisdictions on the Internet, I limited the research population in this study to Internet users from the United States. This choice was made because CC licenses were originally developed in response to the so-called permission culture in the United States. Another reason I only recruited Internet users from the United States is due to the restraints of time and resources.

I recruited the participants in this experiment through the Amazon's Mechanical Turk (AMT), an online crowd-sourcing platform of distributing tasks to anonymous Internet users.<sup>49</sup> These Internet users, who register as “workers” in the

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<sup>49</sup> Amazon Mechanical Turk: Artificial Intelligence, <https://www.mturk.com/mturk/welcome> (last visited 04/11/2013).

AMT, select the tasks on the platform posted by “requesters.” They receive compensation through the built-in payment mechanism in AMT when the requesters approve their tasks. A task on the AMT is described as Human Intelligence Task (HIT). Originally, Amazon built AMT as a platform for humans to do tasks that are very difficult for computers, such as audio transcription or extracting data from images. However, because AMT provides researchers with low cost access to a large, stable and diverse subject pool, it has emerged as a popular tool for conducting online behavior research in recent years.<sup>50</sup>

Besides being an inexpensive recruiting tool, there are several other reasons why I used AMT to recruit my participants for my experiment. First of all, several studies show that AMT participants are more demographically diverse than standard Internet samples and significantly more diverse than traditional convenient samples, such as American college students.<sup>51</sup> Moreover, these studies also indicate that the quality of data provided by AMT is at least as good as that from undergraduate pool, which is typical used in behavioral and attitudinal experiments. In fact, the quality of data generally meets the psychometric standards required to publish research.<sup>52</sup>

However, there are also some limitations to using AMT population as a subject

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50 Winter Mason & Siddharth Suri, *Conducting behavioral research on Amazon's Mechanical Turk*, 44 BEHAVIOR RESEARCH METHODS 1–23 (2012).

51 See Gregory Huber et al., *Using Mechanical Turk as a Subject Recruitment Tool for Experimental Research*, (2011); Michael Buhrmester et al., *Amazon's Mechanical Turk A New Source of Inexpensive, Yet High-Quality, Data?*, 6 PERSPECTIVES ON PSYCHOLOGICAL SCIENCE 3–5 (2011); Adam J. Berinsky et al., *Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk*, POLITICAL ANALYSIS (2012), <http://pan.oxfordjournals.org/content/early/2012/03/02/pan.mpr057> (last visited 03/08/2013).

52 Michael Buhrmester et al., *Id.*

pool. Recruiting participants in AMT is subject to self-selecting bias. The reason workers in AMT choose to take this survey experiment, which is described as a survey on the Internet users' behaviors in using online photos, may impact the demographics and attitudinal characteristics of participants. Furthermore, despite the fact that AMT population is mostly representative of the U.S. Internet-using population as some studies suggest,<sup>53</sup> it is not an exact microcosm of the U.S. Internet users as a whole.<sup>54</sup> This drawback limits the extent of generalization of the findings about copyright consciousness of American Internet users in this study. Nevertheless, in general, AMT is still a reliable source of recruiting participants for understanding how CC licenses may shape copyright consciousness of the U.S. Internet users, as compared to other convenient samples.

## 2. Recruitment and Demographics of Participants

This experiment was described as “a survey of behaviors in using online photos” on the AMT task list. The criteria for AMT workers to take part in this survey experiment are (1) the location of their IP addresses are from the United States (2) their previous HIT approval rate were equal to or above 95%. The respondents

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53 *Who are the crowdworkers?: shifting demographics in mechanical turk*, in CHI '10 EXTENDED ABSTRACTS ON HUMAN FACTORS IN COMPUTING SYSTEMS 2863–2872, 2, <http://doi.acm.org/10.1145/1753846.1753873> (last visited 01/21/2013).

54 A study conducted in 2009 shows that the demographics of U.S. Internet population and the U.S. AMT users are similar with regard to geographical distribution and racial composition. Nevertheless, compared to U.S. Internet users, AMT users are younger with lower income. 54% of them are between 21-35 years old, compared to 22% of the general Internet population. 65% of them have household income less than sixty thousand dollars, compared to 45% of the general Internet population. Moreover, 70 % of them are female while general Internet population is around 50 % women. See Panos Ipeirotis, “Turker Demographics vs Internet Demographics,” *A Computer Scientist in Business School*, March 16, 2009, available at <http://www.behind-the-enemy-lines.com/2009/03/turker-demographics-vs-internet.html> (last visited 12/05/2012).



of this experiment were paid \$0.50 for completing this 5-10 minute survey. The payment was chosen according to my observation on the typical reward for 5-10 minute surveys or experiments on the AMT. A total of 637 participants completed the experiment. Among these participants, 492 of them successfully answered basic manipulation checks. Only the latter participants were included in the analysis of this study.

Of all participants, 64 % were male while 36 % were female. In general, the participants were relatively young. 76% of all respondents were under the age of thirty-five while only 5% were more than fifty-four years old. The mean age of all participants was thirty-one years old. Most of the respondents reported having experiences of creating content and sharing it on the Internet. In fact, as shown in Figure 3.1, 45% of them create content and share it on the internet at least one or two times a month. Table 3.2 shows that the two most common occupations of these participants are student (23%) and computer professional (12%). The other five common occupations are office and administrative support (9%), educator and researcher (7%), artist (7%), sales and marketing (6%), and housewife or househusband (5%). Approximately 12% of respondents were unemployed.

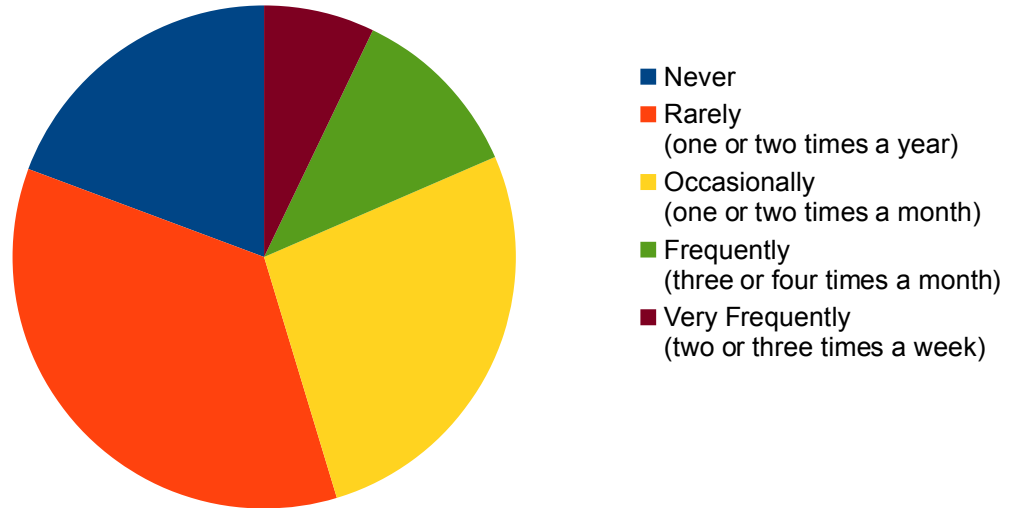
Table 3.1 The Demographics of Participants' Age

Age	Number of Respondents	Percent
18-25	211	43%
26-34	162	33%
35-44	58	12%
45-54	38	8%
55-64	18	4%
65 or over	5	1%
Total	492	100%

Table 3.2 The Demographics of Participants' Occupations

Occupation	Number of Respondents	Percent
Artist (musician, writer, painter etc.)	32	7%
Educator or researcher	33	7%
Student	115	23%
Health professional or personal care service	15	3%
Housewife or househusband	23	5%
Computer professional	57	12%
Office or administrative support	44	9%
Production, farming, manufacturing, repairing	19	4%
Food preparation or related service	11	2%
Legal professional	9	2%
Accounting, financial	7	1%
Sales, marketing	31	6%
Retired	12	2%
unemployed	60	12%
Other	24	5%
Total	492	100%

Figure 3.1 The Frequency of Creating and Sharing Content on the Internet (N=492)



### 3. Procedure and Material

There are four independent variables in this experiment, including the specific licensing terms of different CC licenses and whether subjects are given an introduction to copyright law. Participants are randomly assigned into four groups to see whether these variables impact their copyright consciousness. Each group has 123 participants. Group A, which is a control group, receives no treatment in this experiment. Neither an introduction to copyright law nor the information on CC licensing terms are provided for them. Participants in groups B and C are told to read the licensing information of CC-BY and CC-BY-NC-ND respectively. They are instructed to read the official simplified versions of the CC licensing terms, which are called “Human Readable Deeds.” As mentioned before, there are six main CC licenses, which differ in their licensing terms. I chose to include CC-BY and CC-BY-

NC-ND in this study from the six main CC licenses because CC-BY is the least restrictive CC license while CC-BY-NC-ND is the most restrictive. They are on the two ends of the spectrum of CC licenses. In this way, we can begin to analyze how different CC licenses may affect the copyright consciousness of participants differently, as compared to those in group A.

Unlike the above three groups, participants in group D are instructed to read an introduction to copyright law. The “Copyright Basics” they read in this experiment is abridged from the “Campus Guide to Copyright Compliance” (CGCC) published by the Copyright Clearance Center.<sup>55</sup> Generally speaking, the purpose of the CGCC is to raise copyright awareness and develop a copyright “compliance culture” in the academic institutions, as it stresses the need for obtaining copyright permission.<sup>56</sup> Although the CGCC introduces the fair use doctrine, it also states that “fair use is not an exception to copyright compliance.”<sup>57</sup> To many public domain advocates, this document hardly represents a neutral presentation of copyright law. Indeed, some may even compare the “compliance culture” to a permission culture. In this regard, the CGCC may provide suitable material to observe how a specific vision of copyright education may affect participants' legal consciousness. In addition, it should be noted that the CGCC is a lengthy document with several sections on copyright law. To keep the length of the material read by group D to be roughly equal to those read by groups B and C, I only included the sections on copyright protection, penalty of

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55 Copyright Clearance Center, “The Campus Guide to Copyright Compliance,” <http://www.copyright.com/Services/copyrightoncampus/intro/index.html> (last visited 02/28/2013).

56 See *Id.*

57 Copyright Clearance Center, “The Campus Guide to Copyright Compliance,” <http://www.copyright.com/Services/copyrightoncampus/basics/fairuse.html> (last visited 02/28/2013).

copyright infringement, and the fair use doctrine.

Table 3.3 Reading Materials for Each Group

Group A	Group B	Group C	Group D
N/A	Human Readable Deeds (CC-BY)	Human Readable Deeds (CC-BY-NC-ND)	Copyright Basics

CC licenses can be adopted in photographs, music, texts and other copyrighted content. In this experiment, I used photographs as materials to see how CC licenses influence participants' copyright consciousness. Many photographers use CC licenses to share their photos. Internet users are also likely to encounter CC-licensed photos when they look for pictures on Flickr or Google Image Search. In other words, photographs are some of the most commonly CC-licensed content on the Internet. Moreover, compared to music or video, displaying a photo in an online experiment can avoid many technical issues. For example, a participant's browser may not support the format of the video or music, or a participant may not be able to turn on speakers when he takes this experiment.

There are two photos in this experiment. Photo X depicts a puppy chewing on a ball, and photo Y shows a puppy running. All of the participants see these two pictures in the experiment, but they may see them with different licensing or copyright information. In group A (control group) treatment, the first vignette is photo X without any information on copyright or licensing terms. Participants in group A

are simply told the photo was taken by an amateur photographer, and he uploaded the photo to his public album on the Internet. In contrast, participants in group B are told that photo X is licensed under CC-BY. They see the official “Some Rights Reserved” CC licensing mark below the photo X. Participants in group C are told that photo X is licensed under CC-BY-NC-ND. Participants in group D see an “All Rights Reserved” copyright notice under photo X instead of a CC licensing mark. They are also instructed that there is no licensing information for photo X.

Table 3.4 Copyright or Licensing Information of Photo X

Group A	Group B	Group C	Group D
N/A	CC-BY	CC-BY-NC-ND	© All Rights Reserved

Participants in all groups are instructed that they are unable to contact the author for permission to use photo X. They are also told that they will attribute the photo to the author if they decide to use the photo. With this in mind, they will answer questions about how likely they would be to use the photo in the three hypothetical scenarios, shown in Table 3.5. The answers to these questions are formatted in a five point Linkert scale, on which 1 means “very unlikely,” and 5 means “very likely.”

Table 3.5 Hypothetical Uses of the Photo

Question	Type of use
Share the photo on their blogs (they are told they do not put advertisement on the blog to earn money)	Non-commercial distribution
Adapt the photo and post it on their blogs	Non-commercial adaptation
Copy the photo in a postcard set that they plan to sell	Commercial reproduction

These questions aim to gain an understanding as to whether participants would behave differently in the above three hypothetical circumstances when different copyright or CC licensing information is presented to them. However, it should be noted that photos can be reproduced, adapted and distributed in a wide range of contexts. The above three scenarios were chosen as examples of non-commercial distribution, non-commercial adaption, and commercial reproduction. The first two scenarios were chosen because a blog is a popular medium of publishing and sharing content on the Internet. Most Internet users are likely to have visited blogs, and some of them may have posted articles or photos on their own blogs. As for the third question, the hypothetical scenario was chosen because it is a clear commercial use of the photo.

In the second half of the experiment, the information concerning photo Y for participants in groups A and D is virtually the same as with photo X. Group A again receives no copyright information, while the photo shown to group D is shown with

the “All Rights Reserved” copyright notice. The only difference from the first portion of the study is that instead of photo X, they now see photo Y, which they are told was taken by another amateur photographer. On the other hand, instead of seeing another CC licensed photo, participants in groups B and C see photo Y with the “All Rights Reserved” copyright notice.

Table 3.6 Copyright Information of Photo Y

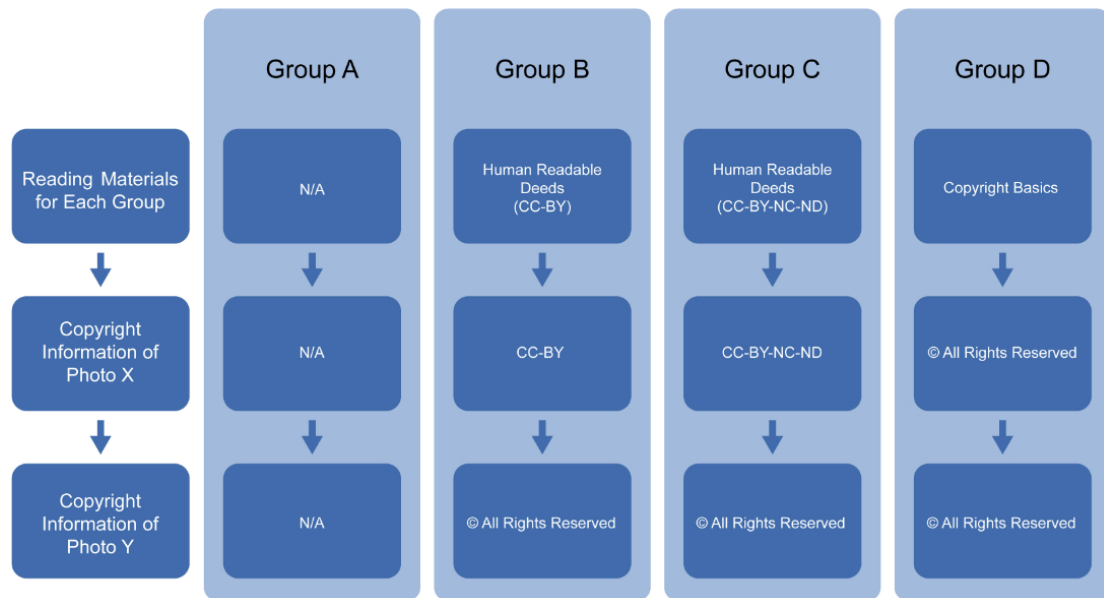
Group A	Group B	Group C	Group D
N/A	© All Rights Reserved	© All Rights Reserved	© All Rights Reserved

The participants in all four groups also need to answer questions about the hypothetical uses of photo Y, as shown in Table 3.5. In addition, they need to answer the degree of importance in obtaining permission from authors in the same scenarios. The answers are formatted on a five point scale, on which 1 means “not very important” and 5 means “extremely important.”

For all of the groups, photo Y is not presented as CC-licensed. However, participants in groups B and C are aware of the practice of CC licensing in the previous instruction. By comparing the self-reported likelihood of using these photos by groups B and C to that of the other groups, we could see that how the acquaintance with CC licensing practices may affect participants' behaviors and attitudes toward unauthorized use of intellectual property.



Figure 3.2 Material and Procedure of Experiment



## **IV. Creative Commons and Intellectual Property: A Case Study of Taiwan**

### **A. From Pirates to Proprietors: The Transformation of Copyright Protection in Taiwan**

Taiwan<sup>58</sup> was once commonly dubbed, particularly within U.S. industry, as the “pirate kingdom” of the World.<sup>59</sup> In the past, the Taiwanese government believed, not without justification, that reprinting and translation of foreign works was vital to people's access to knowledge in a developing country like Taiwan.<sup>60</sup> Indeed, historically, the Taiwanese government showed little interests in suppressing unauthorized reprinting in Taiwan.<sup>61</sup>

Since the late eighties, intellectual property law in Taiwan has undergone a series of reforms. Taiwan's Copyright Act has been revised eight times in the fifteen years since 1989.<sup>62</sup> The Taiwanese government has also started a series of public campaigns for educating the public about the need for intellectual property compliance. While pressure from the U.S government played a significant role in the described transformation of intellectual property protection in Taiwan, these changes also resulted from the economic, political, cultural and technological transformations that occurred in Taiwan since the second half of the eighties.<sup>63</sup> In particular, an

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58 Taiwan, which officially known as Republic of China, is a state in an island of the East Asia. The island lies some 180 kilometers off the southeastern coast of Mainland China. Today's population of Taiwan is roughly twenty three million, consisting of 98% Han Chinese.

59 See Andy Y. Sun, *From Pirate King To Jungle King: Transformation of Taiwan's Intellectual Property Protection*, Occasional Paper / Reprints Series in Contemporary Asian Study No.6 – 1997 (143), School of Law, Univ. of Maryland.

60 See DAVID KASER, *BOOK PIRATING IN TAIWAN* 76 (University of Pennsylvania Press) (1969).

61 *Id.*

62 Taiwan's Copyright Act was revised in 1990, 1993, 1998, 2001, 2003, 2004, 2006, 2007, 2008, 2009, 2010 and twice in 1992 since the nineties.

63 WILLIAMS P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY*

awareness that the protection of intellectual property is necessary for the further development and industrial upgrading in Taiwan has turned the past pirate into a proprietor.<sup>64</sup> Copying is no longer considered to be an “elegant offense” but the cancer to innovation and creativity.<sup>65</sup>

## **B. The Origin and Development of Creative Commons in Taiwan**

In 2003, Tyng-Ruey Chuang, the associate research fellow at the Institute of Information Science at Academia Sinica in Taiwan, was told that Creative Commons were looking for partners around the world to port CC licenses into local jurisdictions.<sup>66</sup> After a year of public discussion and revision, Chung and other volunteers ported CC licenses into Taiwan in 2004. Creative Commons Taiwan was officially launched in 2005.

As a director of Creative Commons Taiwan, Chung surmised that the idea of Creative Commons might lead Taiwanese people to rethink what constitutes an adequate degree of intellectual property protection.<sup>67</sup> In his opinion, because of the stigma of being known as a “pirating kingdom” in the past, the Taiwanese government and the public had over-corrected with respect to intellectual property protection. However, “authors do not necessarily benefit from the extensive protection of

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LAW IN CHINESE CIVILIZATION 107–108 (Stanford Univ. Press) (1995).

64 See *Id.* at 95–111.

65 See *Id.*

66 Interview with Tyng-Ruey Chung at Taipei, Taiwan on Dec. 27, 2012.

67 *Id.*

intellectual property,” he said.<sup>68</sup> In this regard, he believed that the idea of “Some Rights Reserved” advocated by Creative Commons might help Taiwanese people to rethink the ideal way to protect intellectual property.<sup>69</sup>

A salient character of the development of Creative Commons in Taiwan is the involvement of the Taiwanese government. The Taiwan Intellectual Property Office (TIPO) and Ministry of Education both play a substantial role in promoting CC licenses in Taiwan. Indeed, Creative Commons Taiwan is also indirectly funded by the Taiwanese government, as it is a project under a public research institute. In general, the involvement of Taiwanese government rendered Creative Commons in Taiwan more of a top-down copyright license promotion than a grassroots movement aiming to change copyright. In fact, Chung himself felt it would be awkward for Creative Commons Taiwan, which is indirectly funded by the government, to engage in the advocacy for copyright reform.<sup>70</sup> Instead, he believed the primary missions of Creative Commons Taiwan should be the stewardship and promotion of CC licenses.

### **C. Copyright Education Campaign and Creative Commons Licenses**

As mentioned above, the Taiwanese government played a significant role in promoting CC licenses. The involvement of TIPO can be dated back to the earliest stage when CC licenses were just ported into Taiwan in 2005. At the launch party of Creative Commons Taiwan, Wen-Hsiang Lu, who was the deputy director of TIPO,

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Interview with Tyng-Ruey Chung on Dec. 27, 2012.

expressed the willingness of TIPO to promote CC licenses. In his talk, he pointed out that CC licenses, as voluntary copyright contracts, do not conflict with but rather complement copyright law.<sup>71</sup> And since Creative Commons “completely respected copyright holders' choices” with regard to the uses of their works, TIPO was willing to promote CC licenses in Taiwan.<sup>72</sup>

One of the core missions of TIPO in Taiwan is to raise the public's copyright awareness.<sup>73</sup> Since 2005, the introduction to CC licenses has been incorporated into several copyright education campaigns instituted by TIPO.<sup>74</sup> In 2007, because the Intellectual Property Rights Police Team reported that copyright infringement on the blogs was becoming serious, TIPO ran a copyright education campaign called the “Five Nos,” with major blog service providers in Taiwan.<sup>75</sup> The “Five Nos” were (1) do not carelessly download music, videos and software on the Internet, (2) do not forward others' articles, music, videos, and software without precaution, (3) do not redistribute or adapt others' articles and photo without authorization, (4) do not use popular music on blogs, (5) and do not sell copyrighted works without authorization on the Internet. Following the above campaign, TIPO cooperated with Wretch, a leading service provider for blogs and online photograph album in Taiwan, to run another copyright education campaign among bloggers – “Shout Out Your Rights!

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71 Tsai, kuan Lin, Creative Commons, (March 20, 2007) available at [http://www.youtube.com/watch?v=eCKZdq4Sjr4&feature=youtube\\_gdata](http://www.youtube.com/watch?v=eCKZdq4Sjr4&feature=youtube_gdata) (last visited 04/11/2013).

72 *Id.*

73 Taiwan Intellectual Property Office, [http://www.tipo.gov.tw/ch/AllInOne\\_Show.aspx?path=114&guid=63bf0212-f442-45e6-80d0-65353fb7321b&lang=zh-tw](http://www.tipo.gov.tw/ch/AllInOne_Show.aspx?path=114&guid=63bf0212-f442-45e6-80d0-65353fb7321b&lang=zh-tw) (last visited 04/11/2013)

74 Taiwan Intellectual Property Office, [http://www.tipo.gov.tw/ch/AllInOne\\_Show.aspx?path=2505&guid=68b68483-7c06-4073-8737-d2a06958b107&lang=zh-tw](http://www.tipo.gov.tw/ch/AllInOne_Show.aspx?path=2505&guid=68b68483-7c06-4073-8737-d2a06958b107&lang=zh-tw) (last visited 04/11/2013).

75 See “Be Careful! Sharing Other's Articles, Music and Photographs May Break Copyright Law,” Economic Daily News, A9 (July 9, 2007).

Support Creative Commons Licenses.”<sup>76</sup> In this campaign, CC licenses were portrayed as a powerful tool to protect copyright for bloggers. The campaign has its own official website: “Protecting Creativity and Using Copyrighted Works Without Worry.”<sup>77</sup> Bloggers could join the campaign by pledging a badge (Figure 4.1) on their own blogs with an opportunity to win a prize. While the lottery event closed in 2008, the website has since been visited by Internet users more than eight hundred thousand times.

Figure 4.1 Shout Out Your Rights! Support Creative Commons Licenses



During the campaign, TIPO and Wretch invited eleven popular bloggers, whose comics works were well-received among Internet users, to promote CC licenses through their comics works. These comics were published on bloggers' own blogs and the above official education campaign website. Besides presenting basic information of CC licenses, these comics also presented various reasons why one should support CC licenses. In general, these comics can be divided into three types of discourse based on their justification for supporting CC licenses (Table 4.1).<sup>78</sup>

76 See “Creative Commons Licenses: Powerful Tools to Protect Your Copyright,” *Economic Daily News*, A15 (Sep. 17, 2008).

77 Taiwan Intellectual Property Office & Wretch, *Protecting Creativity and Using Copyrighted Works Without Worries*, <http://www.wretch.cc/blog/WretchTIPO> (last visited 04/11/2013).

78 All of these comics are available at the official website, <http://www.wretch.cc/blog/WretchTIPO/> (last visited 04/11/2013).

Table 4.1 Types of Discourse for CC Licenses Promotion Comics by Bloggers

Type I	Type II	Type III
Transactional Costs	Property	Originality
Super Moving	Ban Big Cat	Linda
Peanut Ren	Teacher Tseng	Mr. Watermelon
TA	Orange Whale	Melon Biao
Blue Banana		Student No. 12

The first type of discourse emphasized the benefits of CC licenses for reducing transaction costs. For example, Peanut Ren compared the four CC licensing marks – attribution, non-commercial, no derivatives, and share-alike – to the facial expressions of an individual, which display emotions such as happiness, sadness, and anger.<sup>79</sup> Just as facial expressions communicate an individual's emotions to other people, CC licenses signify the will of authors with respect to the uses of their works to the public. By complying with the conditions of CC licenses, users would avoid the risk of copyright infringement.<sup>80</sup>

The second type of discourse was related to the proprietary control of an author over his works. In the comic by Ban Big Cat, an author was shown diligently working on an article with the “sweat of his brow” (Figure 4.2).<sup>81</sup> His article was taken away by another person after he finished it. The author was enraged. The person who took away the article justified his act by stating that the author should not be so stingy, and the borrowing did not cause harm to him. He also pointed out that the

79 Peanut Ren, Introduction to CC licenses, available at, <http://www.wretch.cc/blog/WretchTIPO/9356173> (last visited 04/11/2013).

80 *Id.*

81 Ban Big Cat, Introduction to CC license, available at <http://www.wretch.cc/blog/WretchTIPO/9356182> (last visited 04/11/2013).

author “did not say people cannot use [his work].” In response, the author took money from the person and justified his behavior with the same reasons. In another comics by Teacher Tseng, CC licenses were described as a powerful tool that empower an author to “declare sovereignty.”<sup>82</sup>

The third type of discourse stressed the importance of originality. They portrayed CC licenses as a mechanism to prevent plagiarism and outrageous copying. For example, in the comic by Melon Biao, he tells a horror story in which one day the genuine Melon Biao finds out that his likeness has been cloned.<sup>83</sup> Melon Biao feels horrified that everyone looks like him and no one can distinguish him from others.

It should be noted that the above three types of discourse sometimes overlap and inter-connect with each other in a single comic. For example, as mentioned above, Teacher Tseng deemed that the primary function of CC licenses is to “declare sovereignty.” In his view, the four CC licensing marks are like “Combos” or skill combinations in a video game that empower authors to defend their property.<sup>84</sup> I classify these comics under the category of proprietary discourse; however, signifying the will of an author to the public through the use of “Combos” also helps reduce transaction costs. The comics also described how many authors worry that their works would be plagiarized while distributing them on the Internet, which was associated with the discourse of originality.

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82 Teacher Tseng, Introduction to CC licenses, available at <http://www.wretch.cc/blog/WretchTIPO/9356066> (last visited 04/11/2013).

83 Melon Biao, Introduction to CC licenses, available at <http://www.wretch.cc/blog/WretchTIPO/9356167> (last visited 04/11/2013).

84 Teacher Tseng, *supra* note 75.



Figure 4.2 Introduction to CC licenses by Ban Big Cat



#### **D. Creative Commons and Intellectual Property Discourse**

Some scholars have suggested that the only coherent ideology behind Creative Commons is the freedom of authors to govern their works. They presented that Creative Commons endorses the Lockean justification of copyright that authors are entitled to exclusive property rights to their works, which are the fruits of their labor.<sup>85</sup> Indeed, this is perhaps the very reason the Taiwanese government would incorporate the promotion of CC licenses into their copyright awareness education campaign. The promotional materials for CC licenses also demonstrate the similarity of Creative Commons and intellectual property discourse. In TIPO's copyright education campaign, CC licenses are portrayed as tools to protect the author's fruits of labor, to claim his “sovereignty” over his property, and to defend his individuality that is embodied in his work by preventing plagiarism and copying.

To be sure, the TIPO's copyright education campaign portrays CC licenses in one specific context; however this case study does show that how Creative Commons may relate to intellectual property discourse, which legitimates the proprietary control of an author over his work. Indeed, some scholars suggest that that the lesson of Creative Commons is that we should grant owners of intellectual property *more* control over information, rather than *less* control.<sup>86</sup> Broader protection of intellectual property gives individual owners the flexibility of exercising their rights according to their judgments, including whether a “Some Rights Reserved” CC license is in their

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<sup>85</sup> Chen *supra* note 32 at 121.

<sup>86</sup> See R. Polk Wagner, Information Wants to be Free: Intellectual Property and the Mythologies of Control, 103 Colum. L. Rev. 995, 1022–1033 (2003).

best interests. Furthermore, the private ordering model avoids the problems caused by legislators' inaccurate prediction of the “adequate” degree of intellectual property protection in the past.<sup>87</sup>

In short, because of the ambivalent relationship between Creative Commons and intellectual property discourse, it is not clear whether CC licenses would contribute to a free culture or instead foster a permission culture. This is also perhaps the reason why scholars have differing opinions toward the impact of CC licenses on copyright consciousness.

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<sup>87</sup> *Id.*

## **V. The Impact of Creative Commons Licenses on Copyright Consciousness**

In this study, I have conducted an experiment to gain an understanding of how CC licenses may influence copyright consciousness of Internet users. In the following, I will describe and analyze the results of the experiment.

### **A. Results of Experiment**

#### **1. The Likelihood of Using Photo X**

As described in the methodology, participants in the experiment were asked to report how likely they would be to use the photos in three hypothetical scenarios. They were asked to use a five point Linkert scale, on which 1 meant “very unlikely” and 5 meant “very likely.” I then calculated the means of self-reported likelihood of using the photos in the hypothetical scenarios.

For participants in group A, the control group, the average likelihood of using photo X for non-commercial distribution was calculated as 3.78. For non-commercial adaptation, the average likelihood was calculated as 2.86, and for commercial reproduction, the mean likelihood was determined to be 1.52. The instruction in the group A contained no information on copyright. Participants in group D, who were instructed to read “Copyright Basics,” saw an “All Rights Reserved” copyright notice below the photo X. The average results of self-reported likelihood in group D were

3.68 for non-commercial distribution of photo X, 2.54 for non-commercial adaptation, and 1.38 for commercial reproduction.

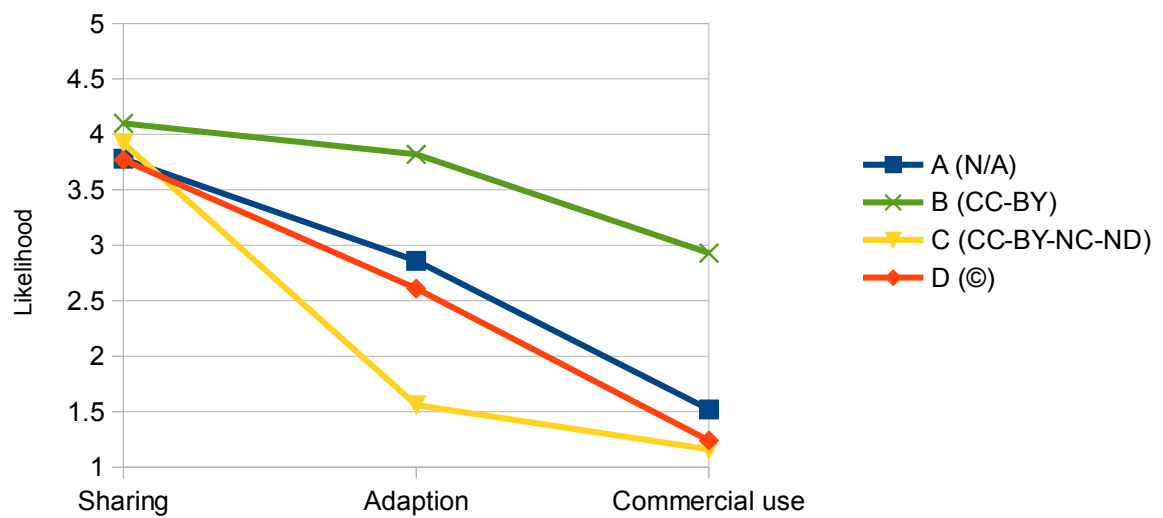
In summary, the self-reported likelihood of using photo X by groups A and D were similar (Figure 5.1). There was no statistically significant difference between the two groups with regard to the likelihood of using this photo for non-commercial distribution and non-commercial adaptation. Participants in group D were only slightly less likely to reproduce photo X for a commercial use than those in the group A ( $p < 0.05$ ). Overall, however, there was little difference between the two groups' behaviors in using photo X.

On the other hand, Figure 5.1 shows that participants in group B, who saw photo X licensed under CC-BY, were substantially more likely to use photo X for non-commercial adaption and commercial reproduction, as compared to participants in group A. They were also slightly more likely to share photo X on their blogs than participants in group A ( $p < 0.05$ ). The self-reported likelihood of using the photo by group B were 4.1 in non-commercial distribution, 3.82 in non-commercial adaption, and 2.93 in commercial reproduction.

As for the use of photo X by group C, which was licensed under CC-BY-NC-ND, the average self-reported likelihood of using the photo was 3.92 for non-commercial distribution, 1.56 for non-commercial adaption, and 1.16 for commercial reproduction. Figure 5.1 shows that the likelihood of non-commercial adaption of

group C was substantially lower than that of group A. It also appears that participants in group C were slightly less likely to engage in commercial reproduction of the photo X than those in group A ( $p < 0.05$ ). However, there was no statistically significant difference among two groups with respect to non-commercial sharing.

Figure 5.1 The Likelihood of Using Photo X by Groups A, B, C, and D

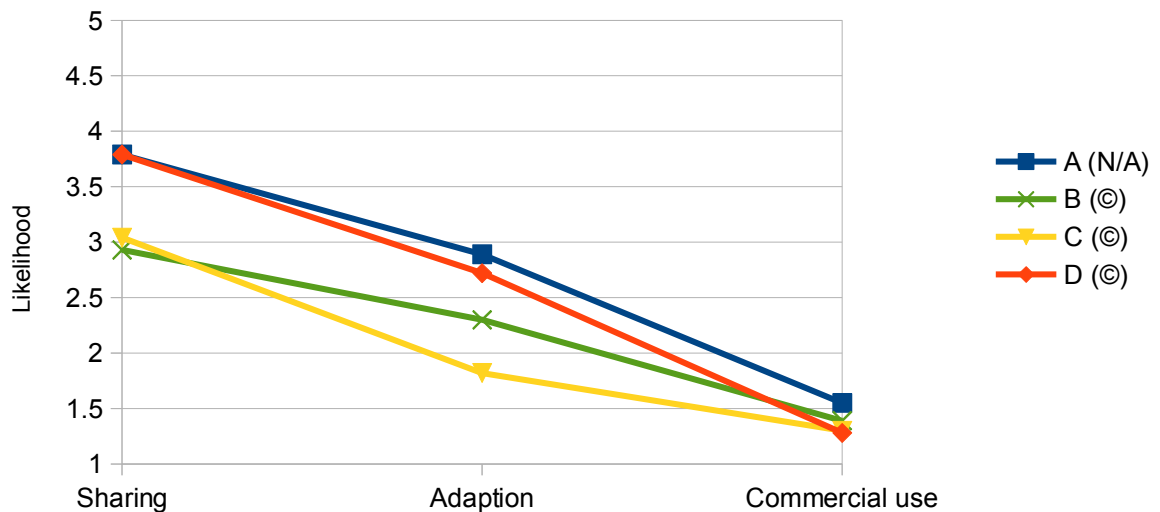


## 2. The likelihood of Using Photo Y

For participants in both groups A and D, the likelihood of using photo Y in all three scenarios were comparable to the likelihood of using photo X. This result was expected because the information and instructions for these two photos were held constant in the treatment for groups A and D. The only change was the photo itself and the photographer.

Figure 5.2 shows that group B's likelihood of using photo Y for non-commercial distribution and non-commercial adaptation was lower than that of group A. The average self-reported likelihoods of using photo Y were 2.93 in non-commercial distribution, 2.3 in non-commercial adaptation, and 1.39 in commercial reproduction. It should be recalled that photo Y in group B is not licensed under CC-BY as photo X was. Instead, there was an “All Right Reserved” copyright notice under photo Y.

Figure 5.2 The Likelihood of Using Photo Y by Groups A, B, C and D



Similarly, photo Y was not licensed under CC-BY-NC-ND as the previous photo X was when shown to group C. Compared to participants in group A, participants in group C were also less likely to distribute or adapt the photo non-commercially (Figure 5.2). In addition, it appears that they were slightly less likely to reproduce the photo commercially than those in the group A ( $p < 0.05$ ). The average self-reported likelihood by participants in group C to use the photo were 3.04 for non-

commercial distribution, 1.82 for non-commercial adaptation, and 1.3 for commercial reproduction.

### **3. The Degree of Importance of Obtaining Permission for Using Photo Y**

The participants in the experiment also reported the degree of importance of obtaining permission for photo Y in the scenarios of non-commercial distribution, non-commercial adaptation, and commercial reproduction. The answers were formatted in a five point scale, on which 1 meant “not very important” and 5 meant “extremely important.” I then calculated the means of self-reported degree of importance for each group.

In the case of commercial reproduction, there was no statistical difference across all groups. Most of the respondents in all groups deemed that it is extremely important or very important to obtain permission from the author for reproducing the photo Y commercially. With regard to the importance of obtaining permission for non-commercial distribution and non-commercial adaptation, there was also no statistically significant difference between groups A and D. In other words, the attitudes of groups A and D toward obtaining permission in all scenarios were similar to each other.

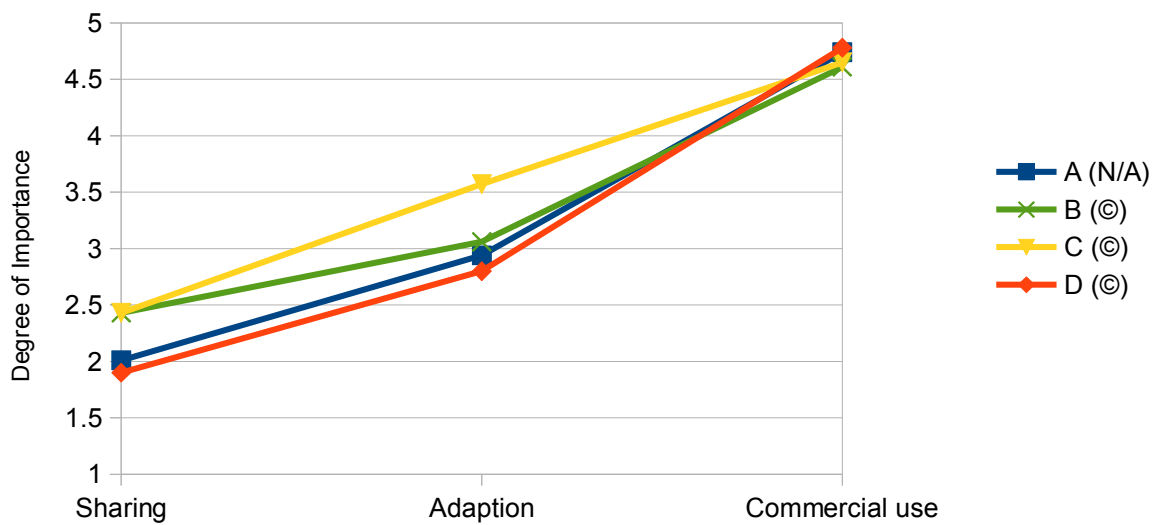
On the other hand, the degree of importance of obtaining permission for group B in cases of non-commercial distribution appeared to be higher than for groups A and



D (Figure 5.3). The average self-reported figure was 2.43, which was higher than those of groups A and D ( $p < 0.05$ ).

Similarly, compared to those in groups A and D, participants in group C tended to think that it was more important to obtain permission for non-commercial distribution and non-commercial adaption (Figure 5.3). The degree of importance of obtaining permission for photo Y of group C was 2.43 in non-commercial distribution and 3.57 in non-commercial adaptation; both of these values were higher than those calculated for group A. The difference was statistically significant.

Figure 5.3 The Degree of Importance of Obtaining Permission for Groups A, B, C and D



## **B. Discussion and Analysis**

### **1. Free Culture or Permission Culture?**

One of the concerns about the private ordering strategy of Creative Commons is that by crafting freedom through the use of copyright licenses, it will affect the meaning of that freedom. According to Elkin-Koren, many works have been posted online by their authors on the implicit presumption that non-commercial reuse is permissible.<sup>88</sup> Due to this sharing culture, she argues that Internet users generally do not bother to get copyright license for non-commercial uses. They do not think it is necessary to obtain the express consent from authors before engaging in non-commercial uses.<sup>89</sup> In short, the critics of Creative Commons worry that by making copyright licenses more friendly and central to users' experiencing in sharing and remixing content, CC licenses allow users become accustomed to such licensing practices. As users are more accustomed to these licensing practices, they may be more uncomfortable using unlicensed works even for non-commercial purposes.

To a large degree, the finding of this study tended to support the above critique. Participants in groups B and C, who had knowledge of CC licensing practices, were less likely to distribute or adapt an unlicensed photo for non-commercial purposes, as compared to those in group A, who had no acquaintance with CC-licensed content in this experiment (Figure 5.2). As shown in Figure 5.3, participants in groups B and C also felt it was more crucial to obtain permission for sharing an unlicensed photo than other participants. Moreover, participants in group

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<sup>88</sup> Elkin-Koren *supra* note 7 at 400.

<sup>89</sup> *Id* at 400-401.

C, who saw photo X with a license prohibiting derivative works also deemed it was more important to acquire consent from the author for adapting the unlicensed photo Y than participants in group A (Figure 5.3). In short, the acquaintance with CC-licensing practices seems to make participants less likely to use unlicensed content for non-commercial purposes. They also tend to be conscious of the importance of obtaining permissions for these uses. This result is more consistent with the norm of so-called permission culture rather than that of free culture.

To be sure, advocates of Creative Commons do not believe the private ordering of Creative Commons is the best strategy to preserve and cultivate a free culture. Instead, most of them regard CC licenses as a workable solution in today's politics of intellectual property. In their view, the “some rights reserved” Creative Commons represents at least some progress in preserving free culture against the dominant message of “all rights reserved” on the Internet. However, the results of this experiment show that the claim is not necessarily true. Participants in group D were instructed to read “Copyright Basics” and saw an “All Right Reserved” copyright notice under the photo Y. Nevertheless, they were no less likely to use photo Y than participants in group B and C, who had the knowledge about CC licenses and were given the opportunity to use the CC-licensed content in this experiment. Indeed, as shown in Figure 5.2, group D was *more* likely to share or adapt the photo non-commercially than those in groups B and C.

In fact, it appears that the attitude of participants, in general, was not

significantly affected by the presence of “All Rights Reserved” copyright notice paired with the information provided by “Copyright Basics,” which emphasizes the need for obtaining permission for using copyrighted works. Figure 5.2 shows that the likelihood of group D participants using photo Y in all three scenarios was similar to that of group A, in which neither copyright nor licensing information was provided for participants. Some may suspect that this outcome was due to the fact that participants in group D did not read the instructions. However, participants in group D needed to answer a manipulation check correctly to be included in the results of this experiment. It seems reasonable to assume that participants in group D read the manipulated materials.

An alternate possible explanation is that American Internet users, in general, are already aware that a photo taken by an individual is likely to be protected under copyright whether there is a copyright notice or not. Perhaps, however, they do not think they actually need permission for every use of a copyrighted photo even though there is an “All Rights Reserved” notice, as some advocates of Creative Commons have implied. In fact, some scholars point out that the impression of copyright as an “all-rights-reserved” regime is somewhat false; copyright is indeed a “some-rights-reserved scheme.”<sup>90</sup> The scope and subject matters of copyright are limited. The fair use doctrine also allows some unauthorized uses of copyrighted works. In other words, there is a “copyright's commons.”<sup>91</sup> In this regard, although “Copyright Basics” portrays fair use in a relatively unfavorable way, it seems that many participants in group D still believed that sharing or adapting photo without

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90 Dusollier *supra* note 23 at 279.

91 Paul Goldstein, *Copyright's Commons*, 29 COLUM. J.L. & ARTS 1 (2005).

commercial purposes is fair use and thus lawful. This interpretation of legality would be consistent with the social norms they are familiar with.

In short, the results of this experiment imply that the acquaintance with CC licensing practices may contribute to the perceived need for obtaining permission for using copyrighted works. Moreover, acquaintance with CC licensing practices, in some cases, may be more effective than certain copyright educational materials in shaping the culture of copyright compliance. Nevertheless, there is a caveat to the above implication. In order to be comparable to the “Human Readable Deeds” of CC licenses in this experiment, my edited version of “Copyright Basics” consisted of texts exclusively. However, the copyright educational materials are usually more colorful and dynamic than “Copyright Basics” in this experiment. For example, the material might be a short video with a simple but strong message. This type of copyright educational materials might be more effective than “Copyright Basics” in this experiment with respect to indoctrinating copyright compliance.

## **2. Creative Commons, Licensing Practices, and Fair Use**

Moreover, the results of the experiment imply that by contributing to the perceived need for obtaining permission for using copyrighted materials, CC licenses may have negative impact on fair use. Granted, all CC licenses stipulate that in no way are any fair use rights affected by the licenses. However, due to the structure of

the fair use doctrine in copyright law, the privileges of fair use become narrower as the practice of clearing copyright become more prevalent. As Section 107 of copyright law provides, in determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include the following:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (2) the nature of the copyrighted work
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- (4) the effect of the use upon the potential market for or value of the copyrighted work

Of these four factors, the Supreme Court in *Harper & Row* declared that the fourth of the fair use factors – the market effect factor – was “undoubtedly the single most important element of fair use.”<sup>92</sup> Commentators and empirical studies have both recognized the central role of the market effect factor in determining fair use.<sup>93</sup> More importantly, the licensing practice has a feedback effect on the application of law to this factor.<sup>94</sup> Licensing markets are not only the results of the application of copyright law, they largely determine whether a particular use is fair use. The more users license certain uses of copyrighted works, the less likely the court will consider these uses as fair use. To put it differently, if users yield to the norm of licensing rather than claim their privileges of fair use, over time, the privileges of fair use will recede, and

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<sup>92</sup> *Harper & Row, Publisher, Inc v. National Enterprises*, 471 U.S. 539, 566 (1985).

<sup>93</sup> 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 13.05[A] [4] ; Barton Beebe, An Empirical Study of the U.S. Copyright Fair Use Cases, 1978-2005, at 12-14 (Oct. 19, 2006), <http://www.law.berkeley.edu/institutes/bclt/students/Beebe.pdf>.

<sup>94</sup> James Gibson, *Risk Aversion and Rights Accretion in Intellectual Property Law*, 116 YALE L.J. 882 (2006).

copyright exclusivity will expand.

This structure of the fair use doctrine is particularly troubling to Creative Commons, which relies on copyright licenses to achieve its objective of cultivating the public domain. Many advocates of free culture movement, including Lessig himself, define fair use as a part of the public domain. However, the underlying proprietary message in Creative Commons licenses may discourage users from invoking fair use even if they are entitled to. In fact, as the result of above experiment have shown, participants who were presented with CC-licensed photograph were less likely to use the photo without permission. In other words, they were less likely to invoke fair use privileges as other participants did. Instead, these participants generally perceived a greater need for obtaining licenses for unauthorized content than others. In this regard, CC licenses, which contribute to licensing practice, may unexpectedly and negatively impact another important component of the public domain – the users' privilege of fair use.

### **3. Creative Commons: A “Welcome Sign” or “No Trespassing”?**

As mentioned before, one of the goals of Creative Commons is to expand the effective public domain. By clarifying what uses of a copyrighted work are allowed, CC licenses provides a “welcome sign” to users.<sup>95</sup>It gives users additional freedoms other than those under copyright law, thereby aiming to expand the effective public

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<sup>95</sup> Emily Harwood, Copyright Critics Push Alternative Protections, (2003), available at <http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-summer-2003/copyright-critics-push-alte> (quoting Creative Commons executive director Glenn Otis Brown).

domain. The results of this experiment shows that, in some cases, CC licenses do work as a welcome sign and expand the effective public domain. However, when a particular use of the copyrighted content is prohibited under the terms of a CC license, this study shows that users, in some cases, are less likely to engage such use. The outcome implies that CC licenses may also function as a “No Trespassing” sign because they declare certain uses are prohibited.

Legally speaking, as Lessig suggests, Creative Commons is a “fair use plus” because it promises that “any freedoms given are always in addition to the freedom guaranteed by law.”<sup>96</sup> In this way, CC licenses are crafted to expand the effective public domain. The result of group B suggests that CC-BY licenses do expand the effective public domain as a “fair use plus” mechanism. Figure 5.1 shows that participants in group B were more likely to use photo X in all three hypothetical scenarios, as compared to those of groups A and D. Indeed, they were substantially more likely to adapt the photo X non-commercially or reproduce it commercially.

However, as shown in Figure 5.1, participants in group C, who were presented with a CC-BY-NC-ND photo, were substantially less likely to adapt the photo non-commercially than those in groups A and D. The result is somewhat intriguing because participants in all three groups faced the same degree of potential legal liabilities. The terms of CC licenses explicitly state that CC licenses do not contain fair use or other applicable copyright exceptions. If users adapt or make commercial

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<sup>96</sup> Lawrence Lessig, “CC in Review: Lawrence Lessig on CC & Fair Use,” Creative Commons, (Oct. 26, 2005), <http://creativecommons.org/weblog/entry/5681> (last visited 03/03/2013).



use of a work licensed under CC-BY-NC-ND, the only outcome is that there is no contract in the first place. In other words, whether or not these uses are legally permissible depends exclusively on copyright law. Accordingly, participants in group C do not face higher potential legal liabilities to adapt photo X non-commercially or to reproduce it commercially, if any, than those in groups A or D. Nevertheless, as mentioned before, they are substantially less likely to adapt photo X non-commercially than participants in groups A and D.

In my opinion, one of the possible explanations may be the effectiveness of CC licenses in communicating an author's intent to the public. In this regard, participants in group C, who see the photo licensed under CC-BY-NC-ND, were clearly aware of the fact that the author did not want them to adapt his photo without further permission. By contrast, participants in group A had no information as to the author's intent with respect to the uses of his photo. Accordingly, they might largely depend on existing social norms or common social practices to decide that whether they would adapt the photo non-commercially, which turned out to be more open than the licensing terms of CC-BY-NC-ND in this case. In summary, this study indicates that when users are aware of an author's intent with regard to the uses of copyrighted works, they tend to respect his will.

However, can the effectiveness of communicating an author's intent to the public explain the difference between groups C and D with regard to the non-commercial adaptation? Participants in group C were also substantially less likely to

adapt the photo non-commercially, as compared to those in group D. However, there is an “All Rights Reserved” copyright notice under the photo X in the treatment for group D. In my opinion, this intriguing result is probably due to the fact that an “All Rights Reserved” notice is arguably a less straightforward “signpost” than the CC-BY-NC-ND licensing mark.

To some extent, an “All Rights Reserved” notice upon a copyrighted work is similar to a “No Trespassing” signpost on private land. However, the statement of “No Trespassing” needs to be understandable to the relevant public in order to be effective.<sup>97</sup> While the “No Trespassing” message seems straightforward, its clarity and effectiveness to assure compliance depends both on the legal rules and social norms of a community. For example, suppose social norms dictate that a rancher may lead his cattle across a private pasture without the consent of its owner. One of the land owners in this community might not want any cattle to enter his grassland, so he might set up a sign saying “No Trespassing.” However, if a rancher sees the “No Trespassing” signpost, he might be unlikely to stop his cattle crossing the land because according to the community norms, his behavior is not trespassing.

Similarly, what an “All Rights Reserved” copyright notice means to users also depends on social norms in a society. Many websites attach an “All Rights Reserved” copyright notice to their content; however, users generally do not bother to get permission for browsing and downloading.<sup>98</sup> In other words, “All Rights

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97 See CAROL M ROSE, *PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY, AND RHETORIC OF OWNERSHIP* 13–17 (Westview Press) (1994).

98 Browsing and downloading both necessarily involve making copies of the content, which are the exclusive rights of authors according to copyright law.

Reserved” on the Internet in practice is never “All Uses Reserved.” Internet users are unlikely to deem that they cannot use copyrighted content in any manners because there is an “All Rights Reserved” copyright notice. Indeed, some scholars suggest that there is arguably a social norm of implied consent on the Internet with respect to certain uses of copyrighted work once it is posted on the website.<sup>99</sup> In this regard, some participants in group D might think that the photographer does not mean to forbid non-commercial adaption of a photo despite the presence of the “All-Rights-Reserved” notice, just as most Internet users do not think they are restricted from browsing or downloading the content because of an “All-Rights-Reserved” notice. By contrast, very few participants in group C, who saw an CC-BY-NC-ND licensed photo, would still assume that the author implicitly consented to non-commercial adaption. This may explain that why participants in group C were less likely to adapt photo X non-commercially than those in group D.

In summary, by reducing information cost, CC licenses not only function as a welcome sign that invites people to use their works, but also as a No Trespassing sign that prohibits certain uses. That is, it serves as a signpost that declares a work is protected by copyright and that certain uses are prohibited, thus raising the copyright consciousness of users who may otherwise feel free to use the works. In this regard, CC licenses are a tool that facilitate authors to claim the sovereignty over their works. It strengthens the legitimacy of authors to exercise control over their works because, ultimately, it is authors who decide certain uses are permissible while others are not.

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<sup>99</sup> John S. Sieman, *Using the Implied License to Inject Common Sense into Digital Copyright*, 85 NORTH CAROLINA LAW REVIEW 885 (2006).

## **VI. Free Culture and Fair Culture – Creative Commons and Intellectual Property**

In the above discussion, we saw that individual users who were informed about CC licensing terms and practices were less likely to use unauthorized content than those who were not similarly informed. The phenomenon aligns more with the norms of permission culture than with the vision of free culture. Moreover, the results of the experiment also shows that respondents are less likely to engage in certain uses such as adaption when they are expressively prohibited by a CC license. Moreover, by reducing the information cost, CC licenses also function as a No Trespassing sign that helps authors to claim their sovereignty over their works. Indeed, this is perhaps why the slogan of a promotional campaign by the Taiwan Intellectual Property Office is “*Shout Out Your Rights!* Support Creative Commons Licenses.” In this campaign, CC licenses were portrayed as a powerful tool to protect copyright and raise copyright consciousness.

In the following section, I will comment on recent efforts of some free culture advocates in defining “Free Cultural Works.” I will argue that the conceptual framework of *fair culture*, which I borrow from Madhavi Sunder, may help us understand better the role of control in CC licenses and its implications that frequently went unheeded from the viewpoint of free culture.

## **A. Defining Free Culture: Reflections on Definition of Free Cultural Works**

As discussed in the previous chapter, while Creative Commons purports to foster a free culture, it is not very clear what type of freedoms it aims to advocate. This is perhaps the reason some free culture advocates try to clarify the concept of free culture by defining “free cultural works.” Benjamin Mako Hill, a Free Software Foundation board member, argues that while Creative Commons was inspired by the success of Free and Open Source Software (FOSS), it failed to set a standard of essential freedoms in its vision and take ethical positions in the same ways that made the FOSS movement successful.<sup>100</sup> In his opinion, without drawing a line between free and non-free licenses, Creative Commons missed the chance to communicate to the public what types of CC licenses are more open or more free than other CC licenses.<sup>101</sup>

In this regard, Hill and Erik Möller, the deputy director of Wikimedia Foundation, published the “Definition of Free Cultural Works(DFCW).”<sup>102</sup> According to the definition, the essential freedoms of a free cultural work include (1) the freedom to use and perform the work and enjoy the benefits of using it, (2) the freedom to study the work and to apply knowledge acquired from it, (3) the freedom to make and redistribute copies, in whole or in part, of the information or expression and (4) the freedom to make changes and improvements, and to distribute derivative

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100 Benjamin Mako Hill, “Toward a Standard of Freedom: Creative Commons and Free Software Movement,” June 29, 2005, available at [http://mako.cc/writing/toward\\_a\\_standard\\_of\\_freedom.html](http://mako.cc/writing/toward_a_standard_of_freedom.html), (last visited 05/02/2013)

101 *Id.*

102 History, Definition of Free Cultural Works, available at <http://freedomdefined.org/History> (last visited 05/02/2013).

works. Among the six main CC licenses, only CC-BY and CC-BY-SA qualify to be a free license under the DFCW.<sup>103</sup> The conditions of non-commercial and no derivative works in CC licenses do not meet the standard of freedoms set by the DFCW.

In response to the demand of the clarification for freedom in CC licenses, in 2008, Creative Commons added a seal – Approved for Free Cultural Works – at the right to the “Commons Deeds” of CC-BY and CC-BY-SA.<sup>104</sup> Mike Linksvayer, the former CTO of Creative Commons, explained that the “Approved For Free Cultural Works” badge in the Commons Deed of CC-BY and CC-BY-SA licenses signals an important delineation between less and more restrictive licenses, which is a distinction that users and creators of content should be aware of.<sup>105</sup> In 2012, Creative Commons introduced a new CC license chooser user interface.<sup>106</sup> In addition to overhauling the interface, a notable difference between the new and old license chooser is a standout message “This is a Free Culture License” and “This is not a Free Culture License” depending on which CC license a user selects.

In my opinion, while DFCW may help to distinguish less restrictive CC licenses from restrictive ones, we should be cautious of assuming the share morality and perception of freedom in creative artist communities. The DFCW approach is

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103 Licenses, Definition of Free Cultural Works, available at <http://freedomdefined.org/Licenses> (last visited 05/02/2013).

104 Mike Linksvayer, Approved for Free Cultural Work, Feb. 20, 2008, <https://creativecommons.org/weblog/entry/8051> (last visited 05/03/2013). The seal is at right to commons deeds of CC-BY and CC-BY-SA, see <http://creativecommons.org/licenses/by/3.0/> and <http://creativecommons.org/licenses/by-sa/3.0/>. On the other hand, there is no counterpart badge on the other four CC licenses. In addition, the color scheme of Commons Deed of CC-BY and CC-BY-SA is green, as compared to the yellow one in the other four CC licenses.

105 *Id.*

106 See Jonathan Palecek, New Creative Commons License Chooser, July 31, 2012 <http://creativecommons.org/weblog/entry/33430> (last visited 05/03/2013).

influenced by the Free Software Definition, which is advocated by the founder of Free Software Foundation, who regards free software as a moral principle.<sup>107</sup> In fact, the DFCW is similar to Free Software Definition in many aspects. However, unlike the relatively homogeneous community of computer programmers, the adopters of CC licenses range from singers to teachers, writers to cartoonists. The norms in creating and sharing content within each of these communities may differ significantly from each other.<sup>108</sup> The one-size-fit-all approach arguably neglects the nuances of norms across different creative communities.

Furthermore, it should be noted that even a free culture license, such as CC-BY, may generate mixed results in terms of maximizing the freedom. While it is true that participants in this study were more likely to distribute, adapt and make commercial use of CC-BY licensed content than of unauthorized materials (see Figure 5.1), the results also suggest that CC-BY may contribute to the norm of licensing practices, just as CC-BY-NC-ND does. CC-BY-NC-ND is a non-free-culture license according to the DFCW. In fact, participants in both groups B and C in the experiment, after becoming familiarized with CC-BY or CC-BY-NC-ND licensed content, were both *less* likely to share and adapt a photo without obtaining permission, as compared to the control group (Figure 5.2). This is perhaps because all CC licenses, despite whether they are free culture licenses or not, implicitly defer to the legitimacy of authors to control over their works.

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<sup>107</sup> See SAM WILLIAMS, *FREE AS IN FREEDOM: RICHARD STALLMAN'S CRUSADE FOR FREE SOFTWARE* (O'Reilly, 1st ed.) (2002).

<sup>108</sup> See LESSIG *supra* note 20 at 242.

However, I am not suggesting that the private ordering strategy of Creative Commons is doomed in efforts to foster a free culture. What I am arguing is that we should pay more attention to the aspect of *control* of CC licenses and how CC licenses may shape the copyright consciousness. In this regard, I believe that the conceptual framework of fair culture may help us to understand the characteristics and impacts of CC licenses.

## **B. Creative Commons and Fair Culture**

According to Madhavi Sunder, a fair culture seeks to promote free cultural exchange on fair terms. On the one hand, a fair culture aims to promote sharing and access to cultural expression. On the other hand, it recognizes the need for recognition and remuneration.<sup>109</sup> As she points out, among others, there are some important dimensions of fairness in a fair culture: (1) fairness as capability to participate in cultural production (2) fairness as recognition and (3) fairness as recognizing vulnerability to exploitation.<sup>110</sup> Sunder is mainly concerned about how the discourse of a “romantic public domain” may obscure unjust appropriation, and how the poor may use intellectual property as a tool (but not a right) to develop their capacity and earn a livelihood.<sup>111</sup> I find the concept of fair culture can aptly describe the function of licensing conditions in Creative Commons. It also calls attention to the impact of CC licenses on copyright consciousness and its implications, which may be overlooked from the perspective of free culture.

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109 MADHAVI SUNDER, FROM GOODS TO A GOOD LIFE : INTELLECTUAL PROPERTY AND GLOBAL JUSTICE 94 (Yale University Press,) (2012).

110 *Id.* at 94–100.

111 *Id.* at 87–88.



The first important element in a fair culture is that it emphasizes one's capability to participate in cultural production. As Sunder argues, freedom to participate in cultural life stands at the core of liberty "because those who do not have power over the story that dominates their lives, power to retell it, rethink it, deconstruct it, joke about it, and change it as times change, truly are powerless, because they cannot think new thoughts."<sup>112</sup>In this regard, a fair culture is similar to the vision of free culture, which often praises the practices of participatory culture. Participatory culture, to which Lessig refers to as a "read-write culture" as opposed to a "read-only culture," is a culture where individuals not only act as passive consumers but also as contributors or producers.<sup>113</sup> Digital technology and the Internet empower users to make and remix culture themselves. Tweaking copyright to realizing the potential of the technology has always been an important goal of Creative Commons.<sup>114</sup>

However, compared to a free culture, the concept of fair culture aims to call our attention to the ambivalent relationship between control and fairness. In my opinion, the conditions of CC licenses, to some degree, can be mapped under the concept of fairness. First of all, recognition is one of the important aspects of fairness. The requirement for attribution under a CC license ensures the recognition of an author's contribution. In fact, fairness is arguably a better explanation of the condition of attribution than freedom. According to the DFCW, the requirement for attribution

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<sup>112</sup> *Id.* at 64–65(citing Salman Rushdie)

<sup>113</sup> See LESSIG *supra* note 20.

<sup>114</sup> See Creative Commons, About Creative Commons, available at <http://creativecommons.org/about> (last visited 05/18/2013).

is permissible because it does not impede essential freedoms, such as freedom to distribute cultural works.<sup>115</sup> However, proper attribution under the term of a CC license may be onerous in some cases, and can hinder hinders the widest possible distribution and reuses of the work in question. Despite this potential negative impact on distribution and reuses, all of the CC licenses after the version 2.0 require attribution. In fact, more than 98% of existing CC-licensed content consisted of the requirement of attribution.<sup>116</sup> This suggests that the concept of fairness may play a vital role in enabling the sharing and cooperation in an intellectual commons.

Secondly, a fair culture recognizes vulnerability to exploitation. As Sunders points out, fear of exploitation may discourage people from sharing their culture and knowledge. For example, due to the difference in power and prior experience of colonization, some local indigenous communities hesitate to participate in what they perceive to be exploitation of their tradition knowledge without exclusive rights.<sup>117</sup> More generally, without certain levels of control over their works, individual may be less willing to share their creativity works. Many amateurs will create with or without the protection of intellectual property, but they may hoard their knowledge and works if they feel they could be treated unfairly. For example, while many amateurs do not plan to make profit from their content, most of them are likely to feel mistreated if some companies make commercial use of their works without permission. Similarly, some artists may hesitate to share their works unless they are confident that their works will retain their integrity and communicate the intended

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115 Definition, Definition of Free Cultural Works, available at <http://freedomdefined.org/Definition> (last visited 05/02/2013).

116 Creative Commons, Licenses Statistics, available at [http://wiki.creativecommons.org/Metrics/License\\_statistics](http://wiki.creativecommons.org/Metrics/License_statistics) , (last visited 05/22/2013).

117 SUNDER *supra* note 109 at 98.

meaning. This is probably the reason why the condition of no-derivatives in CC licenses is also popular with some CC licensors. In this regard, the concept of fairness may reveal the role of intellectual property in facilitating access to knowledge and encouraging sharing, which is essential to the strategy of Creative Commons but which is also sometimes overlooked by free culture advocates.

On the other hand, fair culture's emphasis on the capability to participate in cultural production also reminds us of the limitations of the private ordering strategy adopted by Creative Commons. Cultural activities do not occur in thin air. Instead, they take place in an intertwined web of a specific cultural landscape. One cannot simply step out the values, meaning and resources of his own culture, but must “work through culture” by negotiating existing cultural expressions.<sup>118</sup> This is what Julie Cohen refers to as “cultural situatedness.”<sup>119</sup> In this regard, as mass-produced content by corporation occupies a significant part of our cultural lives, the intellectual commons created by CC licenses offers only a partial solution to empower individuals to participate in cultural production. Creative Commons may work well for follow-on creators who are looking for materials of a particular kind, such as a photograph of animals or landscapes. In fact, there are millions of CC-licensed photograph of animals and photograph in Flickr. However, Creative Commons often falls short for creators who seek to critique or build upon specific artifacts, such as popular movies or popular songs, which are seldom released under CC licenses.

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118 JULIE E. COHEN, *CONFIGURING THE NETWORKED SELF : LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE* 82–93 (Yale University Press) (2012).

119 *Id.* at 82

More importantly, the importance of fair use in empowering individuals to participate in cultural production calls our attention to the licensing practices, to which CC licenses may contribute. As this study points out, the experience of using CC licensed content may raise copyright consciousness and contribute to the norm of licensing. While this outcome is not undesirable when the practices are consistent with a fair culture, it may become problematic when it impedes the capacity of individuals to access knowledge and participate in cultural production. The felt need to obtain permission, which Creative Commons tend to contribute, may discourage individuals from invoking fair use privilege. The phenomenon may shrink the existing domain of fair use privileges, as it becomes a “traditional licensing market” of copyright holders. However, fair use is an important tool for individuals, particularly for the poor, to participate in the process of making and remaking of their culture. In this regard, the concept of fair culture requires us to be wary of the fact that promoting CC licenses may actually have negative impacts by shrinking the domain of fair use.

## VII. Conclusion

As a private ordering strategy, CC licenses provide an innovative way to enable the public to cultivate the effective public domain. They are also designed to foster a free culture that allows creativity to flourish. However, as a voluntary copyright license, it inevitably recognizes and legitimates the sovereignty of authors over his copyrighted works. This outcome is not necessarily undesirable. Nevertheless, in some cases, as some scholars argue, it may paradoxically reinforce the proprietary message underlying the permission culture, which Creative Commons is purported to resist. The finding of this study suggests the above concern is not completely without basis. The results of the experiment show that participants given knowledge of CC licensing practices were less likely to later use unauthorized content than other participants. They also tended to think it more important to obtain permission for using copyrighted works than others. Moreover, the case study of Taiwan shows that promotion of CC licenses can actually be used in public education campaigns to enhance copyright compliance. Against this backdrop, I suggest that the conceptual framework of fair culture may help us understand the aspect of control in CC licenses and its impact on copyright consciousness, which is often overlooked from the perspective of free culture.

## **Appendix**

Group A



David Thomas

The photograph above was taken by David Thomas. He loves to take pictures in his free time. He often uploads his photos to an online album and shares them with the public. The puppy in this photograph is his pet.

Suppose you find the photograph on the Internet. You like the photo very much and want to use it in the following scenarios. You are not able to contact the photographer. But you will attribute the photo to him when you use it. How likely are you to use the photograph in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Russell Nelson

This photograph was taken by Russell Nelson. He enjoys taking pictures in his leisure time. He often uploads his photos to an online album and shares them with the public. The puppy in this photograph is his pet.

Suppose you also like this photograph very much and want to use it in the following scenarios. You are not able to contact the photographer either. However, you will attribute the photograph to him when you use it. How likely are you to use the photograph in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



How important do you think it is to obtain the consent from the photographer for use of this photograph in the following scenarios?

	Not at all Important	Somewhat Important	Important	Very Important	Extremely Important
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Group B


In this survey, you will be asked how likely you would be to use two on-line photos in certain scenarios. The first photograph is licensed under a copyright license called Creative Commons Attribution, while the second one is not. To achieve the purpose of this survey, you need to have a basic idea of what a Creative Commons license is. Please take time to read the following information before answering any questions



Creative Commons Attribution 3.0

Creative Commons Attribution 3.0 license is a public copyright license that lets the public distribute, remix, tweak, and build upon an author's copyrighted work, even commercially, as long as the person doing so credits the artist for the original creation. In other words, if you follow the condition of attribution, you are not obliged to contact the artist for permission to share, remix, or make commercial use of the work because you already have obtained consent.

Please see the following "Commons Deed" of Creative Commons Attribution for further information:

  
Attribution 3.0 Unported (CC BY 3.0)

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[Disclaimer](#)

You are free:


to Share — to copy, distribute and transmit the work

to Remix — to adapt the work

to make commercial use of the work



Under the following conditions:

**Attribution** — You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work).

With the understanding that:

**Waiver** — Any of the above conditions can be **waived** if you get permission from the copyright holder.

**Public Domain** — Where the work or any of its elements is in the **public domain** under applicable law, that status is in no way affected by the license.

**Other Rights** — In no way are any of the following rights affected by the license:

- Your fair dealing or **fair use** rights, or other applicable copyright exceptions and limitations;
- The author's **moral** rights;
- Rights other persons may have either in the work itself or in how the work is used, such as **publicity** or privacy rights.

**Notice** — For any reuse or distribution, you must make clear to others the license terms of this work. The best way to do this is with a link to this web page.

Are you allowed to adapt or remix a work licensed under Creative Commons Attribution?

☐ Yes    ☐ No

Are you allowed to make commercial use of a work licensed under Creative Commons Attribution?

☐ Yes    ☐ No



This work by David Thomas is licensed under Creative Commons Attribution 3.0

The photograph above was taken by David Thomas, who owns its copyright. He has licensed the photograph under Creative Commons Attribution, which allows you to distribute, tweak, and adapt his work, even commercially, as long as you attribute the photograph to him.

Suppose you find the photograph on the Internet. You like the picture very much and want to use it in the following scenarios. You are not able to contact the photographer. However, you will attribute the photograph to him when you use it. How likely are you to use the picture in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Copyright © 2012 Russell Nelson. All Rights Reserved.

This photograph was taken by Russell Nelson, who owns its copyright. Unlike the previous photograph found on the Internet, there is no licensing information for this picture. Instead, the photographer attaches an “All Rights Reserved” copyright notice to the picture.

Nevertheless, you also like the photograph very much and want to use it in the following scenarios. You are not able to contact the photographer either. However, you will attribute the photograph to him when you use it. How likely are you to use the photograph in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

How important do you think it is to obtain the consent from the photographer for the use of this photo in the following scenarios?

	Not at all Important	Somewhat Important	Important	Very Important	Extremely Important
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

To demonstrate that you have understood the material in this survey, please answer the following question. Is the second photograph in this survey (the running-puppy picture by Russell Nelson) licensed under Creative Commons Attribution?

☐ Yes    ☐ No

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## Group C

In this survey, you will be asked how likely you would be to use two on-line photos in certain scenarios. The first photograph is licensed under a copyright license called Creative Commons Attribution-NonCommercial-NoDerivs, while the second one is not. To achieve the purpose of this survey, you need to have a basic idea of what a Creative Commons license is. Please take time to read the following information before answering any questions.




## Creative Commons Attribution-NonCommercial-NoDerivs 3.0

Creative Commons Attribution-NonCommercial-NoDerivs is a public copyright license that allows the public to download a copyrighted work and share it with others as long as he or she credit its author, but they can't change the work in any way or use it commercially.

In other words, if you follow the conditions of attribution, non-commercial, and no derivative works, you are not obliged to contact the author for sharing the work because you have already obtained consent.

Please see the following "Commons Deed" of Creative Commons Attribution-NonCommercial-NoDerivs for further information:



### Attribution-NonCommercial-NoDerivs 3.0 Unported (CC BY-NC-ND 3.0)




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[Disclaimer](#)

**You are free:**

**to Share** — to copy, distribute and transmit the work

**Under the following conditions:**

-  **Attribution** — You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work).
-  **Noncommercial** — You may not use this work for commercial purposes.
-  **No Derivative Works** — You may not alter, transform, or build upon this work.

**With the understanding that:**

**Waiver** — Any of the above conditions can be **waived** if you get permission from the copyright holder.

**Public Domain** — Where the work or any of its elements is in the **public domain** under applicable law, that status is in no way affected by the license.

**Other Rights** — In no way are any of the following rights affected by the license:

- Your fair dealing or **fair use** rights, or other applicable copyright exceptions and limitations;
- The author's **moral** rights;
- Rights other persons may have either in the work itself or in how the work is used, such as **publicity** or privacy rights.

**Notice** — For any reuse or distribution, you must make clear to others the license terms of this work. The best way to do this is with a link to this web page.



Are you allowed to adapt or remix a work licensed under Creative Commons Attribution-NonCommercial-NoDerivs?

☐ Yes    ☐ No

Are you allowed to make commercial use of a work licensed under Creative Commons Attribution-NonCommercial-NoDerivs?

☐ Yes    ☐ No



This work by David Thomas is licensed under Creative Commons Attribution-NonCommercial-NoDerivs 3.0

The photograph above was taken by David Thomas, who owns its copyright. He has licensed the photograph under Creative Commons Attribution-NonCommercial-NoDerivs. The license allows you to download his picture and share it with others as long as you attribute the photo to him, but you can't change the photograph in any way or use it commercially.

Suppose you find the photograph on the Internet. You like the picture very much and want to use it in the following scenarios. You are not able to contact the photographer.

However, you will attribute the photograph to him when you use it. How likely are you to use the photo in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Copyright © 2012 Russell Nelson. All Rights Reserved.

This photograph was taken by Russell Nelson, who owns its copyright. Unlike the previous photograph on the Internet, there is no licensing information for this photo. Instead, the photographer attaches an “All Rights Reserved” copyright notice to the photograph.

Nevertheless, you also like the picture very much and want to use it in the following scenarios. You are not able to contact the photographer either. However, you will



attribute the photograph to him when you use it. How likely are you to use the photograph in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

How important do you think it is to obtain the consent from the photographer for use of this photo in the following scenarios?

	Not at all Important	Somewhat Important	Important	Very Important	Extremely Important
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

To demonstrate that you have understood the material in this survey, please answer the following question. Is the second photograph you see in this survey (the running-puppy picture by Russell Nelson) licensed under Creative Commons Attribution-NonCommercial-NoDerivs ?

☐ Yes    ☐ No

Does the Creative Commons license affect your fair use rights or other applicable copyright exceptions and limitations?

☐ Yes    ☐ No

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## **Group D**

In this survey, you will be asked how likely you would be to use two online photos in certain scenarios. To achieve the goal of this survey, you need to have a basic idea of what a copyright is. The following materials are adapted from *Copyright Basics* published by the Copyright Clearance Center. Please take time to read the following information before answering any questions.

## **Copyright Basics**

### **Copyright Protects Authors of Original Works**

Copyright holders have the exclusive rights to copy, distribute, perform, and display their works. They also have the right to prepare derivative work based on their works. It is unlawful for anyone to violate any of the rights provided by copyright law to the owner of a copyright. This is why individuals and institutions usually need permission if they want to reproduce or distribute articles, songs, photos, or other copyrighted materials.

### **Penalties of Copyright Infringement**

Compensation for copyright infringement may include damages such as lost profits from the infringing activity or statutory damages ranging from \$250 to \$150,000, plus attorney fees, for each infringing copy. Even higher damages may be awarded if the court feels that the infringement was committed “willfully.” You may also be

criminally liable if you willfully copy a work for profit or financial gain or if the copied work has a value of more than \$1,000. In these cases, penalties can include a one-year jail sentence plus fines. If the value is more than \$2,500, you may be sentenced to five years in jail plus fines. Criminal penalties generally apply to large-scale commercial piracy.

### **Fair Use is Not an Exception to Copyright Compliance**

Fair use recognizes that certain uses of the copyright protected work do not require permission from the copyright holder. However, fair use is not an exception to copyright compliance; it is more of a “legal defense.” That is, if you copy and share a copyright-protected work and the copyright holder claims copyright infringement, you may be able to assert a defense of fair use, which you would then have to prove. The US Copyright Act lists four factors to help determine when a use may be considered “fair.” In practice, an individual has to weigh all four factors to determine if the use in a particular circumstance is truly fair use. As a result, to avoid a potential legal liability, many institutions follow a policy of “when in doubt, obtain permission.”

Will you be criminally liable if you copy a work that has a value of more than \$400?

☐ Yes    ☐ No

How many factors does an individual have to weigh to determine the use in a particular circumstance is fair use?

☐ One    ☐ Two    ☐ Three    ☐ Four



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The photograph above was taken by David Thomas, who owns its copyright. There is no licensing information for this photograph. Instead, the photographer attaches an “All Rights Reserved” copyright notice to the photo.

Suppose you find the picture on the Internet. You like the photograph very much and want to use it in the following scenarios. You are not able to contact the photographer. However, you will attribute the photograph to him when you use it. How likely are you to use the picture in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Copyright © 2012 Russell Nelson. All Rights Reserved.

This photo is taken by Russell Nelson, who owns its copyright. There is no licensing information for this photograph either. Instead, the photographer attaches an “All Rights Reserved” copyright notice to the picture.

You also like the photograph very much and want to use it in the following scenarios. You are not able to contact the photographer. However, you will attribute the photograph to him when you use it. How likely are you going to use the photograph in the following scenarios?

	Very Unlikely	Unlikely	Undecided	Likely	Very Likely
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

How important do you think it is to obtain the consent from the photographer for use of this photo in the following scenarios?

	Not at all Important	Somewhat Important	Important	Very Important	Extremely Important
Share the photo on your blog (you don't put ads on your blog to earn money)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the photo and share it on your blog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copy the photo in a postcard set that you plan to sell (you own a publishing company)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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What is your gender?

☐ Male    ☐ Female

Which of the following comes closest to describing your present occupation?

- ☐ Artist (musician, writer, painter etc.)
- ☐ Educator or researcher
- ☐ Health professional or personal care service
- ☐ Housewife or househusband
- ☐ Computer professional
- ☐ Office or administrative support
- ☐ Production, farming, manufacturing, repairing
- ☐ Food preparation or related service
- ☐ Legal professional
- ☐ Accounting or financial
- ☐ Sale or marketing
- ☐ Retired
- ☐ Unemployed
- ☐ Other

How often do you create content and share it on the Internet, such as writing a blog post or uploading photos or videos to content-sharing websites such as Flickr or YouTube?

- ☐ Never
- ☐ Rarely (one or two times a year)
- ☐ Occasionally (one or two times a month)
- ☐ Frequently (three or four times a month)
- ☐ Very frequently (two or three times a week)

To what degree were you familiar with copyright law before this survey?

- ☐ Not at all familiar
- ☐ Slightly familiar
- ☐ Moderately familiar
- ☐ Very familiar
- ☐ Extremely familiar

To what degree were you familiar with “fair use” before this survey?

- ☐ Not at all familiar
- ☐ Slightly familiar
- ☐ Moderately familiar
- ☐ Very familiar
- ☐ Extremely familiar

Had you ever heard of Creative Commons licenses before this survey?

- ☐ Yes    ☐ No

To what degree were you familiar with Creative Commons licenses before this survey?

- ☐ Not at all familiar
- ☐ Slightly familiar
- ☐ Moderately familiar
- ☐ Very familiar

☐ Extremely familiar